No. 93-766

In The

Supreme Court of the United States

October Term, 1993

Supreme Court, U.S.
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JULIUS RYTMAN, DORA RYTMAN, COLCHESTER EGG FARMS, INC., RYTMAN GRAIN, INC., JULIUS AND DORA RYTMAN PROPRIETORSHIP, PINECREST DUCK FARM TRUST, AND AGRI-FINANCE, INC.

Petitioners,

vs.

KOFKOFF EGG FARM LIMITED PARTNERSHIP, SAMUEL KOFKOFF, ROBERT KOFKOFF, JOSEPH FORTIN, BLAIR HAGY, COLCHESTER FOODS, INC., PIERCE HOLLOW FARMS, FITCHVILLE REALTY, INC., CONNECTICUT NATIONAL BANK, NORWICH SAVINGS SOCIETY, BROWN, JACOBSON, JEWETT & LAUDONE, P.C. N/K/A BROWN, JACOBSON, TILLINGHAST, LAHAN & KING, P.C., MILTON JACOBSON, AND GLENN GORDON

Respondents.

Petition For Writ of Certiorari To The United States Court of Appeals For The Second Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. What is the standard of review of a District Court's finding that an amendment is "futile" when the amendment is filed to cure deficiencies raised by a Motion To Dismiss Pursuant to Federal Rules of Civil Procedure 12(b)(6)?

2. Whether a State Court Complaint, removed to the Federal Court, should be scrutinized under applicable state procedural rules as opposed to Federal Rules of Civil Procedure 9(b)?

3. Whether Reves v. Ernst & Young applies to 18 U.S.C. Section 1962(b) cases?

4. Are bankers exempt from RICO?

5. Do allegations of state criminal extortion constitute predicate acts under RICO?

6. Whether the Petitioners have alleged a claim under RICO, 18 U.S.C. Sections 1961-1968 through claims of violations of the Hobbs Act and state law extortion against lenders?

7. Whether actions of mortgagees and lenders constite "acquisition or maintenance of an interest in or control" required under 18 U.S.C. 1962(b)?

8. Whether the circuit court should have been required to analyze Petitioners' claims against its attorney and allegations beyond the time period covered by the District Court?

9. Whether a Federal Court can act on a Motion

for Summary Judgment when discovery is outstanding and the party opposing summary judgment has requested the opportunity to conduct discovery before the motion is heard?

PARTIES TO THE PROCEEDING

The caption of the case in this Court contains the names of all parties to the proceedings in the Second Circuit.

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Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

OPINION BELOW

The opinions of the Second Circuit Court of Appeals are not officially reported and appear in Appendix A 1-12 and 25-26.

The opinions of the District Court are not officially reported and appear in Appendix A 13-24.

JURISDICTION

The judgment of the Court of Appeals (A 1-9) was entered on June 21, 1993. A petition for rehearing was denied on August 10, 1993 (A 25-26). The jurisdiction of the Court invoked under 28 U.S.C. Section 1254(1).

STATUTORY AND FEDERAL RULES OF CIVIL PROCEDURE

This case involves the following statutes and Rules of Federal Civil Procedure; and are included in the Appendix at the end of the Petition:

::

I. Federal Rules of Civl Procedure 9(b);

II. Federal Rules of Civil Procedure 15(a);

III. Federal Rules of Civil Procedure (12(b)(6);

IV. Federal Rules of Civil Procedure 56(f);

V. Federal Rules of Civil Procedure 59(e);

VI. Federal Rules of Civil Procedure 81(c);

VII. Federal Rules of Civil Procedure 60(b);

VIII. 18 U.S.C. Section 1961(1); 1962(b)(c)(d);

IX. 18 U.S.C. Section 1341;

X. 18 U.S.C. Section 1343;

XI. 18 U.S.C. Section 1951;

XII. 28 U.S.C. Section 1446(d);

XIII. Connecticut General Statute Sec. 53a-119.

STATEMENT OF THE CASE

A. Proceedings and Disposition Below

This is an action arising under the Racketeering Influenced and Corrupt Organization Act ("RICO"), 18 U.S.C. 1961-1968. Petitioners (Julius Rytman, Dora Rytman, Colchester Egg Farms, Inc., Rytman Grain, Inc., Julius and Dora Rytman Proprietorship, Pincecrest Duck Farm Trust, and Agri-Finance, Inc. ("Rytmans")) filed and served their summons and complaint on November 2, 1992. Respondents (Kofkoff Egg Farm Limited Partnership, Samuel Kofkoff, Robert Kofkoff, Joseph Fortin, Blair Hagy, Colchester Foods, Inc., Pierce Hollow Farms, Fitchville Realty, Inc. ("Kofkoff"), Connecticut National Bank ("CNB"), Norwich Savings Society ("NSS"), Brown, Jacobson, Jewett & Laudone, P.C. n/k/a Brown, Jacobson, Tillinghast, Lahan & King, P.C., Milton Jacobson, and Glenn Gordon ("Jacobson")) filed Motions to Dismiss

under Rule 12(b)(6) on June 2, 1991, June 1, 1992, and May 27, 1992. Respondent, NSS filed a Motion for Summary Judgment on June 4, 1992. The District Court, without oral argument, (even though the Rytmans requested it) granted the Respondents' motions on August 31, 1992 that the Rytmans failed to state a claim. Said ruling did not provide for a leave to amend. Petitioners filed several post judgment motions including a Motion to Alter and Amend Judgment (pursuant to F.R.C.P. 59(e)) and a Motion for Reconsideration on September 23, 1992 and September 18, 1993. Said motions requested, in part, Leave to Amend the Complaint. On February 18, 1993, the District Court granted the Motion to Reconsider and denied the Motion to Alter and Amend Judgment. The Court denied Leave to Amend on the basis that the Amended Complaint did not cure the defects the Court found in the original Complaint discussed under Rule 12(b)(6) for failure to state a claim.

Petitioners appealed to the Second Circuit on December 24, 1992 and February 22, 1993. Oral arguments were heard on June 14, 1993. On June 21,

1993, the Second Circuit affirmed the District Court's decision. On July 6, 1993, Petitioners filed a Petition for Rehearing with a suggestion that it be heard En Banc. The Petition was denied on August 10, 1993. Petitioners now seek certiorari.

FACTUAL ALLEGATIONS

Petitioners allege that the respondents ("defendants") engaged in a number of criminal schemes in which they controlled and acquired interests in the Rytmans' businesses which consisted of an integrated poultry business ("the enterprise").

The defendants consist of the Kofkoff group, who were competitors, joint venturers and lenders of the Rytmans' enterprises; Connecticut National Bank ("CNB") was a lender to Rytman and Kofkoff; and Norwich Savings Society ("NSS") was a loan participant with CNB on a Rytman guaranteed loan; the defendants attorneys (collectively referred to as Jacobson) who represented the Rytmans, their enterprise and the Kofkoffs, in the same transactions, wrongfully and fraudulently provided legal advice to the Rytmans and assisted the Kofkoffs

in committing acts of extortion and fraud that resulted in Kofkoffs' control and acquisition of the interests of Rytmans' enterprises. (Jacobson also represented CNB and NSS during this period of time).

CNB wanted to terminate its relationship with Petitioners and strengthen its relationship with Kofkoff. Jacobson, as attorney for both sides of the transaction, was instrumental in assisting the other defendants in the various schemes to benefit its clients Kofkoff, NSS, CNB, and itself. Additionally, NSS was outraged by CNB's embezzlement/conversion of purchase money funds allocated to CNB as opposed to other creditors (including NSS), which it fraudulently obtained from the Petitioners when Petitioners acquired the real estate that NSS and CNB had secured a participation mortgage. NSS used its knowledge of CNB's embezzlement/conversion and fraud to gain the status of co-lead lender on all of Petitioners loans with CNB. Once NSS obtained co-lead status, it proceeded to use CNB's mortgages and collateral rights in a manner that was beyond the rights contained in the documents themselves and

beyond the rights afforded by state law. The wrongful use of these rights resulted in NSS controlling the Petitioners' enterprises' liquidation in an unlawful manner. The wrongful use of these rights resulted in NSS acquiring $190,000 of Petitioners' enterprise's assets to which NSS did not have a legal right. The wrongful use of these rights resulted in NSS, along with the other defendnats, acquiring all of Petitioners' assets at a fraction of their value.

The entire Amended Complaint is set forth in Appendix Volume 1 A1-1, et seq. and it sets out a narrative of the events and the 117 predicate acts.

The Petitioners alleged that they were solvent and had more than enough assets to pay all of their obligations to Kofkoff, CNB and NSS and be left with substantial assets. The Petitioners alleged that the defendants through a pattern of racketeering (including the predicate acts in violation of, inter alia, Connecticut General Statutes Section 53a-119(5) et seq., (Connecticut criminal extortion), Hobbs Act, 18 USC Sec. 1951, Mail, 18 USC Sec. 1341 and Wire

Fraud, 18 USC Sec. 1343), caused the Petitioners to default on their obligations to Kofkoff, CNB and NSS and once the Petitioners had defaulted, the defendants, through a pattern of racketeering (including predicate acts in violation of inter alia, Connecticut criminal extortions, Hobbs Act, Mail and Wire Fraud), prevented the Petitioners from curing the default and extinguishing their debt. The Petitioners alleged that the defendants through a pattern of racketeering activity were able to wrongly induce, compel and defraud the Rytmans to consent to the acquiring and maintaining directly and indirectly of an interest in and control of the Petitioners' enterprises. The Petitioners' alleged, in their Amended Complaint (set forth in Appendix Volume 1 "A1") a minimum of 117 predicate acts of which 33 were specifically alleged as mail/wire fraud. The other predicate acts consisted of state law claims and Hobbs Act violations.

The Petitioners have alleged that the defendants then, through a pattern of racketeering activity, proceed to wrongfully control the Petitioners and

their enterprise so that the defendants could acquire, through a sham and fraudulent repossession and foreclosure procedure, the assets of the Petitioners' enterprise thereby leaving the Petitioners and their enterprises assetless and still in debt to Kofkoff, CNB and NSS even though Petitioners' enterprise's assets were worth substantially more than the debt due to the Kofkoff, CNB and NSS and Petitioners would have been able to pay their debts in full to Kofkoff, CNB, and NSS if the defendants exercised their contractural and legal rights as opposed to extorting and defrauding the Petitioners.

REASONS FOR GRANTING THE WRIT

I. WHAT IS THE STANDARD OF REVIEW OF A DISTRICT COURT'S FINDING THAT AN AMENDMENT IS "FUTILE" WHEN THE AMENDMENT IS FILED TO CURE DEFICIENCIES RAISED BY A MOTION TO DISMISS PURSUANT TO FEDERAL RULES OF CIVIL PROCEDURE 12(b)(6)

This case raises the issue of what standard of review the Circuit Court's must use in reviewing decisions of law made by the District Court, namely, that an amended complaint does not state a claim as a matter of law. The Second Circuit adopts an abuse of

discretion standard of review wherein the Circuit Court does not even read the Amended Complaint but only the reasons given by the District Court in denying leave to amend. This is in conflict with other Circuits that held, in general, that all Rule 12(b)(6) rulings dismissing complaints based upon the legal conclusion that the Amended Complaint fails to state a claim as a matter of law must be reviewed de novo by the Circuit Court. Although the issue comes up via a Rule 59(e) motion, the question of what is the standard of review whenever a District Court states, as the District Court stated here, that the Amended Complaint "did not remedy the [Rule 12(b)(6)] deficiencies. The Second Circuit affirmed the District Court's decision because the reason given by the District Court was that the proposed Amended Complaint would be "futile" under the language of Foman v. Davis, 371 U.S. 178, 182 (1962). Foman also dealt with a Rule 59(e) motion. However in that case, the amendment to add a new cause of action after dismissal of the complaint under Rule 12(b)(6). Therefore, the issue by this case goes

beyond Foman's facts because it deals with the standard of review of a District Court's refusal to allow an amendment to cure a complaint found deficient under Rule 12(b)(6) where the District Court finds the amendment would be "futile". In short, what is the appellate review standard for a district court finding that of the "futility of amendment"?

This case raises an important question regarding appellate review. "Independent appellate review of legal issues best serves the dual goals of doctrinal coherence and economy of judicial administration.... Courts of Appeals .... are structurally suited to the collaborative judicial process that promotes decisional accuracy." Salve Regina College v. Russell, 499 U.S. 225, 111 S.Ct. 1217, 1221, 113 L.Ed.2d 190 (1991).

In the present case, the defendants' prevailed on a Rule 12(b)(6) motion to dismiss for failure to state a claim (and a Motion for Summary Judgment as to NSS on the same basis) thereby, dismissing the original complaint. The Petitioners then sought

leave to amend their complaint. The District Court reviewed the amended complaint and ruled that the amended complaint:

> "fail[ed] to remedy the deficiencies prompting judgment [based upon Rule 12(b)(6)] for the defendants."

This was a Rule 12(b)(6) ruling.

The Rytmans appealed the dismissal of the complaint and the District Court's ruling on their requested amendment to the Second Circuit.

The Second Circuit, without independently reading and reviewing the Amended Complaint de novo, affirmed, the District Court's holding. The Second Circuit found that the review, conclusion and evaluation of the District Court did not constitute reversible error using the "abuse of discretion" standard of review. (N.b. The Second Circuit Court improperly applied this standard because the Second Circuit did not read the Amended Complaint and, therefore, was not in a position to even evaluate whether the District Court had abused its discretion. Foman v. Davis, 371 U.S. 178, 181-182 (1962); Gaubert v. Federal Home Loan Bank Board, 863 F.2d 59, 68

(D.C. Cir. 1988); Dussory v. Gulf Coast Investment Corp., 660 F.2d 594, 598 (5th Cir. 1981); Nolin v. Douglas County, 903 F.2d 1546, 1550 (11th Cir. 1990)).

Any appellate review of a decision based upon Rule 12(b)(6) requires the appellate court to read the facts alleged and conduct de novo review. The Supreme Court held in H.J., Inc. v. Northwestern Bell Company, 492 U.S. 229, 249-250, 109 S.Ct. 2893, 2906 (1989) (reversing a dismissal of a RICO claim):

> Because respondents prevailed on a motion under Federal Rule of Civil Procedure 12(b)(6), we [the Supreme Court] read the facts alleged in the complaint in the light most favorable to petitioners. And we may only affirm the dismissal of the complaint if "it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." Hishon v. King & Spalding, 467 U.S. 69, 73, 104 S.Ct. 2229, 2232, 81 L.Ed.2d 59 (1984)

Id. at 2906.

The position of the Second Circuit in applying the abuse of discretion standard of review that does not include reading the Amended Complaint is in conflict with other Circuits. Gaubert, supra, Federal Circuit, Dussory, supra, Fifth Circuit, Nolin, supra, the Eleventh Circuit which requires

the Court to read the Complaint. The Second Circuit is also in conflict with the Sixth Circuit's position where that Court held that ".... the district court has based its decision on 'a legal conclusion that the amended [RICO] pleading would not withstand a motion to dismiss'", the review of "such a decision is de novo." Vild v. Visconsi, 956 F.2d 560, 565 (6th Cir. 1992), cert. denied, U.S. , 113 S.Ct. 99, citing, Martin v. Associated Truck Lines, Inc., 801 F.2d 246, 248 (6th Cir. 1986); see also Dana Corp. v. Blue Cross & Blue Shield, 900 F.2d 882, 887 (6th Cir. 1990); Dugan v. Brooks, 818 F.2d 513, 516 (6th Cir. 1987).

In Vild v. Visconsi, 956 F.2d 560 (6th Cir. 1992), the Sixth Circuit held:

> If the third amended complaint is not sufficient to establish a RICO claim and rectify what the district court deemed to be jurisdictional deficiencies, then there was no error in denying the motion to amend. See Martin, 801 F.2d at 248. If, on the other hand, the third amended complaint does sufficiently state a RICO claim, then we must examine with great care the denial of leave to amend. The essence of Vild's appeal is his assertion that the third amended complaint sufficiently stated a RICO claim.

Id., at 565. The essence of Petitioners' appeal in

this case is their assertion that the amended complaint sufficiently stated a RICO claim. The Second Circuit failed to conduct de novo review of the Amended Complaint. The Supreme Court should grant certiorari, reverse the decision and remand this case to the Second Circuit to conduct de novo review.

In conducting a de novo review, the Circuit Court is not permitted to give the District Court's legal conclusion any deference. Salve Regina College v. Russell, 499 U.S. 225, 111 S.Ct. 1217, 1224, 113 L.Ed.2d 190, (1991); Advanced Cardiovascular System, Inc. v. Scimed Life Systems, 988 F.2d 1157, 1160 (Fed. Cir. 1993); Vild, supra, Eades v. Thompsom, 823 F.2d 1055, 1060 (7th. Cir. 1987). Petitioners know of no circuit that allows anything less than de novo review of a ruling of the District Court involving whether an amended complaint is sufficient under Rule 12(b)(6).

The Second Circuit was also required to conduct a de novo review of the Amended Complaint as it related to the granting of the Motion for Summary Judgment. Adams v. Gould, Inc., 739 F.2d 858, 864 (3d Cir.

1984), cert. denied, 469 U.S. 1122. The Court, in Adams, supra, held that it had to conduct de novo examination of the substance of the claims asserted in the Amended Complaint in order to determine if the Leave to Amend should have been denied. Ibid.

The failure of the Second Circuit to conduct a de novo review of the Amended Complaint is particularly harsh, in this case, where the District Court made significant errors in its finding of fact which were used by the District Court to make its conclusion that the Petitioners had no claim. The defendants did not dispute these errors were made. A de novo review would have resulted in the Circuit Court understanding the correct allegations of fact. Further, to the extent that it was necessary to satisfy Rule 9(b), the Second Circuit, if it conducted de novo review of the amended complaint, would have found that the Petitioners satisfied the particularities requirements of Rule 9(b). The Amended Complaint alleged thirty-two mail/wire fraud violations that met the Rule 9(b) particularity requirement and corrected the deficiency of the

original state court complaint referred to in the Second Circuit decision. As to paragraph 10(mmmm)(i), see paragraph 96 of the Amended Complaint, P. 42, Appendix Vol. 1.):

> "96. On November 6, 1986, Blair Hagy, an employee of Colchester Foods, Inc. sent, via the mail, to the plaintiffs, a fraudulent accounting with respect to the monies paid pursuant to the Egg Supply Agreement. Said letter fraudulently represented the that plaintiffs Julius Rytman and Dora Rytman owed Colchester Foods monies under the agreement by listing false, fraudulently made up costs. Mr. Hagy's letter stated that Julius Rytman and Dora Rytman owed Colchester Foods, Inc. approximately $172,000. In fact, the Kofkoff defendants actually owed them money under the Egg Supply Agreement and the other contracts of over $600,000 for the period running from May 3, 1986 to February 20, 1987. No additional money was due to Colchester Foods, Inc. at the time the letter was sent. This fraudulent letter set the Kofkoff Defendants' scheme to acquire the enterprises assets in motion."

The Supreme Court should clarify this issue and hold that the standard of review of a District Court's refusal to grant leave to amend under Rule 15(a) on the basis of the "futility of the amendment" to cure Rule 12(b)(6) deficiencies is de novo review consistent with H.J., Inc., supra, and Vild, supra, or that the abuse of discretion standard requires a reading of the amended complaint to see that the

decision of the District Court is correct in light of the amended pleading as opposed to an analysis of discretion standard that is limited to an analysis of whether the District Court gave the right reason without reviewing complaint to verify that the reason was proper.

Either way, the Supreme Court should grant certiorari, and reverse and remand directing the Circuit Court to read the amended complaint and apply the appropriate standard.

II. THE COURT SHOULD RESOLVE THE CONFLICT AS TO WHETHER A STATE COURT COMPLAINT, REMOVED TO FEDERAL COURT, SHOULD BE SCRUTINIZED UNDER APPLICABLE STATE PROCEDURAL RULES AS OPPOSED TO FEDERAL RULES OF CIVIL PROCEDURE 9(b)

This case presents another significant and timely issue facing the Federal Courts nationwide, namely, what pleading requirements should be used to analyze a state court complaint removed to federal court. With the advent of bank failures and the generous removal rights under such acts as the Financial Institutions Reform Recovery and Enforcement Act of 1989 as amending the Deposit Insurance Act, 12 USC

Section 1819(A)(2)(B), the issue of what standards will be used to review state court pleadings is one that should be addressed by this Court.

The plaintiffs filed this action in State Court as was their right. Tafflin v. Levett, 493 U.S. 455 (1990). It was removed to the Federal Court over plaintiffs opposition pursuant to 28 USC Section 1446(d), by the defendants. The Federal Rules of Civil Procedure governing removed cases is Rule 81(c) which provides, in relevant part:

> (c) Removed Actions. These rules apply to civil actions removed to the United States district courts from the state courts and govern procedure after removal. Repleading is not necessary unless the court so orders.

The District Court did not order the plaintiffs in this case to replead pursuant to Rule 81(c) or any other rule.

The controlling case concerning a state complaint removed to federal court is Granny Goose Farms, Inc. v. Brotherhood of Teamsters, Inc., 415 U.S. 423, (1974), which holds:

> Judicial economy is promoted by providing that proceedings had in state court shall have force and effect in federal court, so that pleadings

> filed in state court, for example, need not be duplicated in federal courts.

415 U.S. at 435-36.

Pursuant to Rule 81(c), "Repleading is not necessary unless the Court so orders." Lally v. Allstate Ins. Co., 724 F.Supp. 760, affirmed, 830 F.2d 28 (9th Cir. 1989); Matter of Meyerland Co., 960 F.2d 512 (5th Cir. 1992), cert. denied, U.S. , 113 S.Ct. 967, 122 L.Ed.2d 124; Istituto Per Lo Sviluppo Economico Dell' Italiaa Meridionale v. Sperti Prods. Inc., 47 F.R.D. 310 (D.C.N.Y. 1969); Madron v. Thomas, 38 F.R.D. 177 (D.C. Tenn. 1965); Murphy v. E.I. DuPont De Nemours & Co., 26 F.Supp. 999 (D.C. Penn. 1939); Borton v. Connecticut Gen. Life Ins. Co., 25 F.Supp. 579 (D.C. Neb. 1938). See also Recchion v. Kirby, 637 F.Supp. 284, 289 (WD Pa. 1985). (Pennsylvania state procedure in derivative action did not require have particularity requirement of FRCP 23.1. Once the case was removed to Federal Court "plaintiff should be accorded an opportunity to bring his pleading into conformity with the rule." Recchion, supra, citing 7A Wright & Miller Federal

Practice & Procedure Section 1824 at 312 (1972)).

The position of the Fifth Circuit Court of Appeals on this case is:

> A case removed from state court simply comes into the federal system in the same condition in which it left the state system. Granny Goose Foods, Inc., v. Brotherhood of Teamsters, Etc., 415 U.S. 423, 435-436, 94 S.Ct. 1113, 1122-23, 39 L.Ed.2d435 (1974). For instance, if the notice of appeal was adequate in the state court system, it should be deemed adequate when it enters the federal courts, regardless of whether the state technical requirements for notice of appeal differ from the federal. Granny Goose, 415 U.S. at 435-36, 94 S.Ct. at 1122-23.

Matter of Meyerland, supra, 960 F.2d at 520.

Therefore under Granny Goose, Meyerland, and Lally since the District Court did not order the Petitioners to replead nor did any defendant request such a repleading, then the complaint should be "deemed adequate when it enters the federal courts, regardless of whether the state technical requirements" for a specific pleading is different from the federal. The District Court then dismissed the state court complaint on the basis that it did not comply with Federal Rules of Civil Procedure 9(b). The Second Circuit affirmed that ruling.

To allow dismissal of state court complaints, appeals and other pleadings removed to federal court because they did not meet the technical requirements of federal procedure when filed in state court prior to removal would be contrary to Rule 81(c), Granny Goose, supra, and Meyerland, supra, Lally, supra, (and other cases cited herein). Therefore, the Supreme Court should grant certiorari on this issue or reverse and remand this case back to the Second Circuit on the basis of Granny Goose, supra, pursuant to the Supreme Court's Rule 10.1(c).

III. DOES THE REVES V. ERNST & YOUNG, _____ U.S. _____ 1113 S.Ct 1163 (1993) MANAGEMENT AND CONTROL STANDARD FOR SECTION 1962(c) CASES APPLY TO 1962(b) CASES.

On March 3, 1993, the Supreme Court handed down Reves v. Ernst & Young, _____ U.S. _____, 113 S.Ct. 1163 (1993), a case pronouncing the Supreme Court's interpretation of the word "conduct" as used in 18 USC Section 1962(c). On June 21, 1993, the Second Circuit handed down this decision using the Reves definition of "conduct" to hold that an "outsider", as the defendants were alleged to be in this matter,

did not engage in "unlawful conduct" under Section 1962(b).

This case, therefore, presents to this Court the opportunity to tell the Circuits whether, in fact, Reves management and control test is confined to Section 1962(c) or whether the Reves management and control standard applies to Section 1962(b) cases. Having adopted Reves standard for Petitioners' Section 1962(b) claim, the Second Circuit concludes that the "Plaintiffs failed to come forward with evidence that could support their assertions of unlawful conduct."

The Second Circuit's reliance on Reves to evaluate plaintiffs Section 1962(b) claims ignores the holding in Reves which specifically stated that Section 1962(c) analysis and its application to "insiders" did not apply to Section 1962(b) claims and its application to "outsiders". The Supreme Court specifically stated in Reves:

> Infiltration of legitimate organizations by "outsiders". . is clearly addressed in subsections(a) and (b), and the "operation or management" test that applies under subsection(c) in no way limits the application of subsections

> (a) and (b) to "outsiders". Second, Section 1962(c) is limited to persons "employed by or associated with" an enterprise, suggesting a more limited reach than subsections (a) and (b), which do not contain such a restriction. Third, Section 1962(c) cannot be interpreted to reach complete "outsiders" because liability depends on showing that the defendants conducted or participated in the conduct of the "enterprise's affairs," not just their own affairs. Of course, "outsiders" may be liable under Section 1962(c) if they are "associated with" an enterprise and participate in the conduct of its affairs - that is, participate in the operation or management of the enterprise itself - but it would be consistent with neither the language nor the legislative history of Section 1962(c) to interpret it as broadly as petitioners and the United States urge.

113 S.Ct. at 1173.

The Supreme Court should grant certiorari and to clarify that Reves does not apply to Section 1962(b) cases. Clearly, the Supreme Court should not allow this direct conflict between the holding in Reves and the Second Circuit's holding in this case. Therefore, certiorari should be granted under Supreme Court Rule 10.1(c). Alternatively, the Supreme Court should order a summary disposition reversing and remanding pursuant to Supreme Court Rule 16.1.

IV. ARE BANKERS EXEMPT FROM RICO?

Another issue of national importance presented by

this petition is whether RICO applies to bankers. The Second Circuit cites the Eighth Circuit in Terry A. Lambert Plumbing, Inc. v. Western Security Bank, 934 F.2d 976, 981 (8th Cir. 1991) for the position: "Bankers do not become racketeers by acting like bankers." Again, Reves is used by the Second Circuit along with Terry A. Lambert Plumbing, supra, to give credence to its position that Congress intended to immunize bankers from a Section 1962(b) claim. There is no exemption that the Petitioners are aware of in the RICO legislative history to exempt bankers from RICO claims. There is nothing in the RICO statute itself that specifically exempts bankers from RICO. In fact, such an exemption is contrary to the RICO "liberal construction" clause which provides that the "provisions of this title should be liberally construed to effectuate its remedial purposes." Reves, supra, 113 S.Ct. at 1172.

Other circuits have held that bankers can be liable under Section 1961, e.g. Morgan v. Bank of Waukegan, 804 F.2d 970 (7th Cir. 1986); NCNB National Bank of North Carolina v. Tiller, 814 F.2d 931 (4th

Cir. 1987); Quick v. Peoples Bank of Cullman County, 993 F.2d 793 (9th Cir. 1993).

In Morgan v. Bank of Waukegan, 804 F.2d 970 (7th Cir. 1986), the Court held that a scheme where a bank and another defendant sought to systematically strip a borrower of its assets through debt collection proceedings, which involved the use of mails, was a sufficient basis to establish a RICO violation under Section 1962. (Those are the factual allegations made by the Petitioners in this case).

In NCNB National Bank of North Carolina v. Tiller, 814 F.2d 931 (4th Cir. 1987), the Fourth Circuit held that lender conduct constitutes acquisition or maintenance of an interest in or control of a borrower's business within the meaning of 18 USC Section 1962(b) if the bank could be found to engage in:

> Actual day-to-day involvement in management and operations of the borrower or ability to compel the borrower to engage in unusual transactions.

814 F.2d at 936. (These were the factual allegations made by the Rytmans)

In Quick v. Peoples Bank of Cullman County, 993

F.2d 793 (CA9 1992), the Ninth Circuit held that a bank could be liable for the RICO Section 1962(b) violations of one of its bankers.

There is nothing in the legislative history nor in the rulings of the Supreme Court to date, including Reves cited by the Second Circuit, that would immunize or exempt "bankers" from RICO and the Supreme Court should resolve this conflict under Rule 10.1(a).

V. ALLEGATIONS OF STATE CRIMINAL EXTORTION CONSTITUTES PREDICATE ACTS UNDER RICO

This case presents an issue of national importance as to whether allegations of state criminal acts can constitute predicate acts under RICO.

The Petitioners plead violations of Connecticut General Statutes ("C.G.S.") Section 53a-119 et seq. (The Connecticut extortion and larceny statute). The Second Circuit refused to recognize these allegations as predicate acts under 18 U.S.C. Section 1961(1)(A).

The RICO statute specifically states:

As used in this chapter -

(1) "racketeering activity" means (A) any act or threat involving robbery, bribery, and extortion which is chargeable under State law and punishable by imprisonment for more than one year.

The Connecticut extortion part of C.G.S. Section53a-119 provides in relevant part:

Extortion. A person obtains property by extortion when he comples or induces another person to deliver such property to himself or a third person by means of instilling in him a fear that, if the property is not so delivered, the actor or another will: *** (B) cause damage to property; or (C) engage in other conduct constituting a crime; or (D) accuse of some person of a crime or cause criminal charges to be instituted against him; or (E) expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule; ***

(N.b. C.G.S. 53a-122 through 124 sets the prison time for the criminal offenses under Section 53a-119(5) based upon the value of the property extorted or acquired. Property valued in excess of $1,000.00 constitutes a Class D Felony which is punishable by imprisonmnet not less than one year nor more than five years. C.G.S. Section 53a-35a. The enterprises assets acquired and sought to be acquired by the defendants in this matter were worth millions of dollars.)

For example, the Petitioners have plead, in detail, how the Kofkoffs called Julius Rytman on the phone and told him that if Julius did not cooperate with the Kofkoff's efforts to acquire Petitioners' enterprise interests, Kofkoff would create environmental problems on Petitioner's farms that would result in Petitioner's arrest under Connecticut Intense Poultry Act, C.G.S. Sec. 22-323a-2, et seq., a Connecticut criminal statute. In response to this threat on Kofkoffs' part to commit a crime to compel or induce Petitioner to turn over enterprise's interests so Kofkoff could acquire them, Mr. Rytman told the Kofkoff "to go to hell". At that point, the Kofkoffs proceeded to lay off people who controlled the removal of chicken manure on a farm owned by the Petitioner (but now controlled by Kofkoff), brought dead chickens from one farm and then onto that farm in violation of criminal statutes. The accumulation of manure and dead chickens attracted flies, rodents, and ultimately media attention, and resulted in a warrant issued for Petitioner's arrest. This extortionate conduct was one of the acts that forced

the Petitioners to their knees so that they were compelled and induced to consent to selling the enterprise's assets worth millions for a fraction of its value. Amended Complaint Appendix A1, pp. 97-108. This is just one graphic example of many extortionate acts pled.

The failure of the Second Circuit to address Petitioners Connecticut extortion claims as RICO predicate acts is in direct conflict with 18 U.S.C. Section 1961 (1)(A) and is in conflict with the Fourth Circuit in Battlefield Builders, Inc. v. Swango, 743 F.2d 1060, 1068 (4th Cir. 1984). ("We think that plaintiff alleged extortion under Virginia law and a second series of acts constituting attempted extortion under Virginia Law so that plaintiffs did allege a cause of action which is immune to a Rule 12 motion to dismiss".)

The Supreme Court should resolve this conflict and grant certiorari pursuant to Rule 10.1(a).

VI. THIS COURT SHOULD RESOLVE THE CONFLICT AS TO WHETHER THE THREAT TO ENFORCE LEGAL OR CONTRACT RIGHTS BETWEEN PARTIES CAN CONSTITUTE A HOBBS ACT VIOLATION

This decision brings the Second Circuit directly into a nationwide debate as to whether the threat to enforce by legal rights can ever be the basis for Hobb Act violations.

HOBBS ACT VIOLATIONS IN THE BUSINESS CONTEXT

The Hobbs Act, 18 U.S. Section 1951 (extortion and attempted extortion), provides in relevant part:

> (a) Whoever in any way or degree obstructs, delays or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of plan or purpose to do anything in violation of this section shall be fined not more than $10,000 or imprisoned not more than twenty years, or both.
>
> (b) As used in this section - . . . .
>
> (2) The term "extortion" means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under the color of official right.

Judicial construction in the circuit court of the Hobbs Act has not limited the Act's reach to paradigmatic racketeering activities; to the contrary, the reach of the Hobbs Act has been extended to a broad range of conduct far different from the classic case of extracting money by threats

or infliction of physical harm. To establish a violation of section 1951, the plaintiffs must prove three elements: (1) that the defendants induced or attempted to induce his victim to part with property; (2) that they did so by "extortion"; and (3) that interstate commerce was delayed, interrupted, or adversely affected (or that would have been the result had the defendants' efforts succeeded). See Devitt and Blackmar, Federal Jury Practice and Instructions, Sections 56.01 & 56.04; Pattern Jury Instructions, #46, Criminal Cases, Eleventh Circuit (1985). The "property" element includes intangible as well as tangible property, including "the right ... to make a business decision free from outside pressure wrongfully imposed." United States v. Santoni, 585 F.2d 667, 673 (4th Cir. 1978), cert. denied, 440 U.S. 910, 99 S.Ct. 1221, 59, L.Ed.2d 459 (1979); see United States v. Zemek, 634 F.2d 1159, 1174 (9th Cir. 1980), cert. denied, 450 U.S. 916, 101 S.Ct. 1359, 67 L.Ed.2d 341 (1981). The plaintiffs can satisfy the extortion element by proof of the "use of fear," which is not limited to fear of force or

violence - fear of economic harm is prescribed as well. See United States v. Kattar, 840 F.2d 118, 123 (1st Cir. 1988); United States v. Cusmano, 659 F.2d 714, 715 (6th Cir. 1981) (Cusamo I), cert. denied, 467 U.S. 1252, 104 S.Ct. 3536, 82 L.Ed. 2d 841 (1984); Zemek, 634 F.2d at 1174. The fear of economic harm, though, must be "actual and reasonable and [the] defendant [must know] and intentionally ... use ... such actual fear." Cusmano, supra, 659 F.2d at 715. The Act covers explicit as well as implicit threats. See United States v. Duhon, 565 F.2d 345, 351 (5th Cir.), cert. denied, 435 U.S. 952, 98 S.Ct. 1580, 55 L.Ed.2d 802 (1978). Hall American Center Associates v. Dick, 726 F.Supp. 1083, 1093-94 (E.D.Mich. 1989).

The Second Circuit held as a matter of law in this case:

> Allegations that a mortgagee "threatened to foreclose" on certain properties, or that a collateralized lender demanded delivery of the collateral in satisfaction of a defaulted loan do not suffice to allege extortion within the meaning of the Hobbs Act.

The Second Circuit made this finding in face of

Petitioners' clear factual allegations that the defendants were not entitled to foreclose and were not entitled to the collateral. This issue has been sometimes referred to as the "claim of right" doctrine or defense to Hobbs Act violations and has its origin in part in the case of United States v. Emmons, 410 U.S. 396 (1973). In Emmons, the Supreme Court held (5-4 majority) that the Hobbs Act did not prohibit employees' use of violence to obtain legitimate union objectives, such as higher wages in return for services desired by an employer.

Emmons, was immediately interpreted by many Courts of Appeals to apply only to labor cases. U.S. v. Agnes, 753 F.2d 293 (3rd Cir. 1985); United States v. Zappola, 677 F.2d 264, 268-270 (2d Cir. 1982), cert. denied, 459 U.S. 866 (1982); United States v. Porcaro, 648 F.2d 753, 760 (1st Cir. 1981); United States v. French, 628 F.2d 1069, 1075 (8th Cir.), cert. denied, 449 U.S. 956 (1980); United States v. Warledo, 557 F.2d 721, 728-30 (10th Cir. 1977).

The Supreme Court recently in McCormick v. United States, U.S. , 111 S.Ct. 1087 (1991)

dealt with the "under color of official right" language of the Hobbs Act as it applied to public officials. However, McCormick appears to clearly limit its holding to public officials.

The position of the Second Circuit in this case is in conflict with the language of the Act, with other Circuits (namely, the First, Third, Sixth, and Seventh) and with the general holdings of the Supreme Court.

The Hobbs Act provides a precise definition of extortion and Congress intended "to make punishable all conduct falling within the reach of the statutory language". United States v. Culbert, 435 U.S. 371, 377, 98 S.Ct. 1112, 1116 (1978). The Hobbs Act manifests Congressional intent "to use all of the constitutional power [it had] to punish interference with interstate commerce by extortion, robbery or physical violence." Stirone v. United States, 361 U.S. 212, 215, 80 S.Ct. 270 (1970).

Based upon the above, Supreme Court decisions and the First Circuit, have found Hobbs Act violations in the commercial lending context. U.S. v. Strum, 870

F.2d 769 (1st Cir. 1989). In Strum, the creditors fear of non-payment was a sufficient basis for maintaining a Hobbs Act violation.

The First Circuit held that a threat to sue may constitute extortion under the Hobbs Acts if "she [defendants] know she had no claim to the property that she allegedly sought to extort." Id., 774. The First Circuit noted that even though most "defendants will claim that they thought they were legally entitled to the property they extorted. The fact finder is not obligated, however, to believe these claims." Id., 774 n.6. Therefore, summary judgment would be improper.

The First Circuit's position was adopted by a district court in the Sixth Circuit in a commercial setting involving threats to exercise legal rights and actually exercising them. In the case of Hall American Center Associates Limited Partnership v. Dick, 726 F.Supp. 1083 (E.D. Mich. 1989), the Court found, as a matter of law, a sufficient RICO claim based upon Hobbs Act claims.

The extortionate activity allegedly engaged in by

> the defendants was their attempt to obtain the plaintiffs' Property, with the plaintiffs' consent, but induced by their wrongful use of actual or threatened fear of economic harm should the Property not be sold on the defendants' terms. The economic harm appears to be the termination of the Joint Venture, resulting in the continuation of the mortgage default, the continuation of significant interest payments, the loss of profits expected from the venture, the potential loss of the Property, as well as the inability to deal with lenders, buyers, and joint venture partners along with public officials, necessary to the development of the land ***. The economic harm allegedly resulted from the defendants' lawsuits and notices of lis pendens, along with the defendants' letters, threats, and communications to various third parties concerning the property.

Hall American Center Associates Limited Partnerships Dick, 726 F.Supp. at 1094. Similar facts were plead by the Petitioner in their complaint, amended complaint and in their submissions in opposition to the summary judgment

The Third Circuit in U.S. v. Agnes, 753 F.2d 293 (3rd Cir. 1985) held that even if a defendant has a claim of right to the property being acquired that there was no general claim of right defense to the Hobbs Act under federal law. The Third Circuit went on to hold that the defendant could not make a claim of right defense under state law involving his rights

in a partnership dissolution.

The Seventh Circuit in Shields Enterprises, Inc. v. First Chicago Corp., 975 F.2d 1290 (7th Cir. 1992), the defendants' claimed that they could not be held liable in a Civil RICO suit based upon the Hobbs Act where the defendants, in a commercial setting, had contractual and statutory rights to make the alleged threats. The Seventh Circuit held that the threats the defendants made to coerce plaintiff into doing certain actions could violate the Hobbs Act if the threats were in violation of a common law or statutory right of the plaintiff. Id. at 1297. The Seventh Circuit remanded the matter back to the District Court to analyze the claim in light of the common law governing the relationship between the parties to see if it had been breached by the defendants.

The District Court did analyze the claim upon remand and found Hobb's Act extortion. Shields' Enterprises, Inc. v. First Chicago Corp., 1993 WL 408358 (N.D. Ill. 10/8/93). The Court found that the defendants had the contractual right to issue

additional stock, but not to issue additional stock at an allegedly inadequate or unfair price. Therefore, the threat to issue the stock under these circumstances was a Hobbs Act violation. 1993 WL408358, p. 4.

Under the Seventh Circuit Shields' analysis, the Circuit Court has to go further than just finding that a mortgagee threatened to foreclose or that a collateralized lender demanded delivery of the collateral. The Court must analyze to see if the "threat" and/or "demand" violated other common law or statutory law or was beyond the rights of the mortgagee or collateralized lender under the particular facts. In this case, the Petitioners plead violations of their common law rights.

VII. ALLEGATIONS THAT A MORTGAGE "THREATENED TO FORECLOSE" ON CERTAIN PROPERTIES OR THAT A COLLATERALIZED LENDER DEMANDED DELIVERY OF THE COLLATERAL IN SATISFACTION OF A DEFAULTED LOAN CAN "CONSTITUTE ACQUISITION OR MAINTENANCE OF AN INTEREST IN OR CONTROL OF A BORROWER'S BUSINESS WITHIN THE MEANING OF 18 USC SECTION 1962(b)"

Other circuits do not agree with this position taken by the Second Circuit. Sutliff, Inc. v. Donovan Companies, 727 F.2d 648 (7th Cir. 1984)

(citing U.S. v. Crocket, 534 F.2d 589) (5th Cir. 1976).

The conduct set forth in Petitioners' pleadings is similar to the conduct found to be a violation of 18 USC Section 1962(b) in Sutliff, Inc. v. Donovan Companies, 727 F.2d 648 (7th Cir. 1984).

In Sutliff, the plaintiffs, owners, operated a business that generated two million dollars a year in sales. The company got into financial trouble which precipated one plaintiff owner into "a state of hysteria, physical and mental exhaustion ..., a state of substantially diminished mental responsibility, panic and fear ..." Id. at 651. The defendants took advantage of her mental state to sell her product below cost which it resold at a profit. The defendants made small advances to the plaintiff owner that persuaded plaintiff guarantors that the plaintiff owners were solvent and the plaintiff guarantors continued to extend credit to the plaintiff company. The plaintiff guarantors were left "holding the bag" when the plaintiff company collapsed.

> The plaintiffs described this scheme of milking a company dry and leaving its creditors with uncollectible accounts receivable as a "bustout", on which see, e.g., United States v. Crockett, 534 F.2d 589, 592 (5th Cir. 1976), and contend that when the perpetrators of a bust-out use the mails and telephone as Donovan and Garrow are alleged to have done, they have committed federal mail and wire fraud, which are among the crimes that the RICO statute defines as "racketeering" offenses.

727 F.2d at 651. Similarly, the Petitioners described a scheme of milking or stripping the Petitioners enterprise of assets leaving the Petitioners enterprise of assets leaving the Petitioners and its other creditors without assets. The defendants effectively "busted out" the assets of the Petitioners enterprise. The Petitioners also alleged similar hysteria, physical and mental exhaustion.

The Seventh Circuit held that these allegations constituted valid allegations of Section 1962(b). In this regard, the Court noted:

> The Complaint also alleges that the defendants acquired control of Sutliff by means of a fraud. As control within the meaning of the statute need not be formal - need not be the kind of control that is obtained, for example, by acquiring a majority of the stock of a corporation. See United States v. Jacobson, 691 F.2d 110, 112 (2d

Cir. 1982).

Id. 653.

The Seventh Circuit also held that these allegations constituted valid allegations of Section 1962(c). In this regard, the Court noted: The Complaint also describes the defendants as having "associated with" Sutliff and conducted its affairsby means of the fraud; and if, as these allegations imply, the defendants infiltrated Sutliff and used it as a tool to defraud it and the other defendants, Section 1962(c) was violated. Finally, the Circuit Court held that "the allegation that the defendants conspired to violate the previous subsections is a good violation of Section 1962(d). 727 F.2d at 653-654. Therefore, based upon Sutliff the Dfts. violated "b", "c", and "d".

Additionally, the Circuit Court's decision discussed under the Hobbs Act Violations in the Busines Context, supra, and Are Bankers Exempt from RICO, supra, are in conflict with the position taken by the Second Circuit.

VIII. THE SECOND CIRCUIT IGNORED PETITIONERS RICO CLAIMS AGAINST THEIR ATTORNEY AND ALLEGATIONS SPANNING OVER TWO YEARS

The Second Circuit failed to address Petitioners' RICO claim against his attorney, Jacobson, RICO claims against Kofkoff other then the lending claim. All claims were limited to the District Court analysis from February 1987 to November 1987, which the Second Circuit affirmed. The original Complaint and Amended Complaint allegations begin in 1984 and run through the date of filing (and alleges a continuation of wrongful conduct). (See also section on state law extortion claims).

This refusal to consider all of the allegations is is conflict with the long established rules of the Supreme Court. All allegations pled must be reviewed and considered in the light most favorable to the Plt. prior to granting a Motion to Dismiss. H.J., Inc. v. Northwestern Bell Telephone Company, 492 U.S. 229, 249-250 (1989); Hishon v. King & Spaulding, 467 U.S. 69, 69, 703 (1984); Scheuer v. Rhodes, 416 U.S. 232, 236 (1974); Conley v. Gibson, 355 U.S. 41, 45-46 (1957). Swistock v. Jones, 884 F.2d 755, 759 (CA3

1989).

In Swistock v. Jones, 884 F.2d 755 (3rd Cir. 1989), the Court, 3rd Cir., applying H.J., Inc., supra, held:

> "The complaint alleged numerous acts of wire and mail fraud over a period of approximately 14 months for the purposes of inducing plaintiffs into entering into a leasing transaction and to continue to induce plaintiffs to pay under the lease. The complaint alleges (although did not separately identify as predicate acts) further representations made by the defendants in connection with negotiations for a settlement agreement which the parties ultimately signed. Plaintiffs also alleged that they were improperly billed pursuant to a separate agreement."

884 F.2d at 759. The District Court limited its analysis to the last 4 months leading up to the lease agreement (just as the D.Ct. here only dealt with facts after the default and through the "work-out agreement"). The Circuit Court held that in determining the predicate acts, all of the allegations must be considered and found a RICO claim. Therefore, the Suprme Court should grant certiorari and correct the Second Circuit in line with the Supreme Court's own decisions and the Third Circuit.

IX. THE SECOND CIRCUIT DISREGARDED AUTHORITY REQUIRING FULL DISCOVERY PRIOR TO GRANTING A MOTION FOR SUMMARY JUDGMENT

This case presents an opportunity for this Court to consider the standards to be applied when a Court denies a party the right to conduct discovery,without explanation, prior to acting on a motion for Summary Judgment.

Does the fact that discovery had been (and was still) ongoing for a period of time create a basis for moving forward on a Motion for Summary Judgment before discovery is complete? Consideration of a Summary Judgment motion is proper only after there has been an adequate time for discovery. Celotex Corp. v. Catrett, 477 U.S. 317, , 91 L.Ed.2d 265, 273, 106 S.CT. 2548, 2552-53 (1986); Snook v. Trust Co. of Georgia Bank of Savannah, 859 F.2d 865, 870 (11th Cir. 1988) citing e.g., Littlejohn v. Shell Oil Co., 488 F.2d 1140, 1145 (5th Cir. 1973) (en banc), cert. denied, 414 U.S. 1116, 94 S.Ct. 849, 38 L.Ed.2d 743 (noting the high fatality rate of summary dispositions at a time before the facts have been fully developed); Alabama Farm Bureau Mutual Casualty

Co. v. American Fidelity Life Insurance Company, 606 F.2d 602, 609 (5th Cir. 1979), cert. denied, 449 U.S. 820, 101 S.Ct. 77, 66 L.Ed.2d 22 ("Summary Judgment should not, therefore, ordinarily be granted before discovery has been completed).

> The party opposing a motion for summary judgment has a right to challenge the affidavits and other factual materials submitted in support of the motion by conducting sufficient discovery so as to enable him to determine whether he can furnish opposing affidavits. Parrish v. Board of Commissioners of the Alabama State Bar, 533 F.2d 942, 948 (5th Cir. 1976). If the documents or other discovery sought would be relevant to the issues presented by the motion for summary judgment, the opposing party should be allowed the opportunity to utilize the discovery process to gain access to the requested materials. Id. Generally summary judgment is inappropriate when the party opposing the motion has been unable to obtain responses to his discovery requests. Cowan v. J.C. Penney Company, Inc., 790 F.2d 1529, 1532 (11th Cir. 1986).

Snook, supra, 859 F.2d at 870. In the instant case, as in the Snook case, the Petitioners brought the issue of inadequate discovery to the District Court's attention. In a scheduling conference prior to responding to summary judgment, the District Court denied the discovery requests. The Eleventh Circuit in Snook, supra, stated:

> [T]he whole purpose of discovery in a case in which a motion for summary judgment is filed is to give the opposing party an opportunity to discover as many facts as are available and he considers essential to enable him to determine whether he can honestly file opposing affidavits.

Snook, supra, 859 at 871, citing, Parrish, supra, 533 F.2d at 948.

Further, the Third Circuit

> "has criticized the practice of granting summary judgment motions at a time when pertinent discovery requests remain unanswered by the moving party:
>
> [W]e have said where the facts are in possession of the moving party a continuance of a motion for summary judgment for purposes of discovery should be granted almost as a matter of course. Ward v. United States, 471 F.2d 667, 670-71 (8 Cir. 1978)... [B]y acting on the motion for summary judgment without argument, and without reference to what might be developed in discovery, which was being diligently pursued, the court erred. Costlow v. United States, 552 F.2d 560, 564 (3d Cir. 1977)".

Sames v. Gable, 732 F.2d 49, 51 (3d Cir. 1984). See also, Burnside-Ott Aviation Training Center, Inc. v. U.S., 985 F.2d 1574, 1582 (9th Cir. Fed. 1993) (holding summary judgment should be refused where the moving party has not had opportunity to discover information that is essential to its opposition); Dean v. Barber, 951 F.2d 1210 (11th Cir. 1992)

(record did not include a finding by the court that the discovery was complete); Secretary of Labor, U.S. Dept. of Labor v. Burger King Corp., 955 F.2d 681 (11th Cir. 1992) (not proper for the district court to consider a motion for summary judgment while ...two discovery motions were pending); Miller v. Beneficial Management Corp., 977 F.2d 834, 846 (3rd Cir. 1992) (abuse of discretion to deny postponement of ruling on summary judgment pending completion of discovery where party could have read the court's order to imply that formal affidavits would not be required and party asked for postponement until critical discovery completed).

A party must be given the right to conduct discovery prior to Summary Judgment if he so requests an order "to permit affidavits to be obtained or depositions to be taken or discovery to be had", FRCP 56(f). The Petitioners should have been permitted to complete discovery of "potentially favorable information", even though previous discovery had been conducted. Schering Corp. v. Home Insurance Co., 712 F.2d 4, 10 (2d Cir. 1983). (In Schering, the fact

that over 74,000 pages of documents were produced did not warrant a denial of additional discovery prior to acting on a summary judgment motion).

The record clearly establishes that the Petitioner requested discovery prior to the ruling on the Rule 56 Motion and was denied the opportunity to conduct discovery by the District Court, without any explanation. All parties were seeking discovery at the time the District Court rendered its decision. The Petitioners did not have a full opportunity to conduct discovery therefore this Second Circuit ruling is contrary to Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 106 S.Ct. 2505, 2514, 91 L.Ed.2d 202 (1986).

In an affidavit signed by Petitioner's attorney and filed with the District Court, the following facts were presented and uncontested (Appendix A-29-A38 which is part of this booklet). After plaintiffs filed their RICO Statement, the defendants challenged the plaintiffs' Complaint by way of Motions to Dismiss. Eight days later on June 3, 1992, NSS filed a Motion for Summary

Judgment. Discovery had been basically suspended while the District Court dealt with the remand issue - namely from December 12, 1991 - April 1992. (The lawsuit was commenced on November 2, 1991). It had been understood by the parties at a status conference in January of 1992 that the discovery time table would be set at a status conference after the Motion to Remand was decided, this status conference was held on July 9, 1992.

At the July 9, 1992 conference, the plaintiffs sought discovery prior to responding to NSS summary judgment and, in particular, sought to depose the affiant of the NSS affidavit. Crucial were issues raised by the new "facts" sworn to by the NSS affiant. It was the Petitioners' position was that NSS affidavit was false (hereinafter "NSS False Affidavit"). Petitioners needed to conduct discovery on factual issues raised by the Summary Judgment motion and particularly the examination of the issues raised on NSS False Affidavit. This discovery clearly was directed to the matters raised by NSS' summary judgment motion, therefore, it was improper

for the District Court to proceed. Opryland U.S.A., Inc. v. Great American Music Show, 970 F.2d 847 (D.C. Cir. 1992) ("when discovery is reasonably directed to 'facts essential to justify the party's opposition', in the words of Rule 56(b) such discovery must be permitted or summary judgment refused.") (emphasis supplied) quoting footnote 5 of Anderson v, Liberty Lobby, Inc., 477 U.S. 242, 250 n.5 (1986).

The Supreme Court in Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 n.5 (1986) clearly states that "where the non-movant to a summary judgment motion has not had the opportuity to discover information that is essential to his opposition then "summary judgment be refused." (emphasis supplied).

The District Court refused to allow discovery. Instead, the District Court stated to Petitioner's counsel, at the status conference, to just have Petitioner swear to the RICO Statement (which Rytman did) and use whatever proof they had at that point and if they got "caught with their pants down", then file a Motion to Reconsider so that further work could be done to prepare Petitioner's case. In

reliance upon this statement from the District Court, the Petitioners proceeded to respond to the summary judgment motion. The District Court relied on NSS False Affidavit in granting NSS Motion for Summary Judgment, and denied Petitioner's post judgment motions to reconsider. The Petitioners raised this issue clearly in its Rule 60 Motion and Affidavit In Support thereof. The affidavit recited the facts above and provided in relevant part:

> 7. That a misunderstanding may have resulted from a chambers conference with the Honorable Peter Dorsey, Federal District Court Judge and the presiding Judicial Officer Murphy on July 9, 1992 or as a result of said conference a mistake, inadvertise, or excusable neglect occurred as a result of said conference.

Para. 7 Rytmans' Affidavit in Support of Rule 60(6) Motion. (App. A36-A37 at the end of this book). Defendants did not file any counter affidavit or objection to this motion. The motion should have been granted. The District Court denied it without comment. The Petitioners' appealed this decision and the Second Circuit never addressed the Rule 60 motion issue. This position of the Second Circuit not to allow relief from judgment conflicts with the Ninth

Circuit position in Torres v. S. S. Pierce Company, 471 F.2d 473 (9th Cir. 1973), and the Federal Circuit position on Griffin v. Kennedy, 344 F.2d 198 (D.C. Cir. 1965) The Summary Judgment Motion should not have been granted and once granted, then the post judgment motions including the Rule 60b Motion filed by Petitioners should have been granted. Sames v. Gable, 732 F.2d 49, 51 (3rd Cir. 1984) and other cases cired herein.

The District Court never made a finding that discovery was complete. In fact no such finding could be made, as discovery by some of the parties was not completed in Federal Court and was still going in State Court. Summary Judgment should not be granted until the party opposing the motion has had an adequate opportunity for discovery particularly to address the revisions raised by NSS False Affidavit. (N.b. The District Court never found that the factual issue in the State Court action were the same as the RICO action. Therefore, any effort to bootstrap the State Court discovery into this case has no legitimate basis absent such a finding).

CONCLUSION

For the reasons stated, the Writ of Certiorari should issue to review the judgment of the United States Court of Appeals for the Second Circuit.

Respectfully submitted,

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91cv1146

DORSEY

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

- - - - - -

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the twenty-first day of June one thousand nine hundred and ninety-three.

Present: HONORABLE AMALYA L. KEARSE,
HONORABLE GEORGE C. PRATT,
HONORABLE ROGER J. MINER,
Circuit Judges.

(Filed June 21, 1993)

JULIUS RYTMAN, DORA RYTMAN, COLCHESTER EGG FARMS, INC., RYTMAN GRAIN, INC., JULIUS & DORA RYTMAN PROPRIETORSHIP, PINECREST DUCK FARM TRUST, AGRI-FINANCE, INC.,

Plaintiffs-Appellants,

- v. - Nos. 93-7061

-7177

KOFKOFF EGG FARM LIMITED PARTNERSHIP, SAMUEL KOFKOFF, ROBERT KOFKOFF, JOSEPH FORTIN, BLAIR HAGY, COLCHESTER FOODS, INC., CONNECTICUT NATIONAL BANK, NORWICH

Rytman v. Kofkoff Egg Farm Limited Partnership, Nos. 93-7061, -7177

SAVINGS SOCIETY, FITCHVILLE REALTY, INC., BROWN, JACOBSON, JEWETT & LAUDONE, P.C., now known as Brown, Jacobson, Tillinghast, Lahan & King, P.C., MILTON L. JACOBSON, GLENN GORDON, PIERCE HOLLOW FARMS, INC.,

Defendants-Appellees

Appeal from the United States District Court for the District of Connecticut.

This cause came to be heard on the transcript of record from the United States District Court for the District of Connecticut, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is not hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed.

Plaintiffs Julius Rytman et al. (collectively "Rytman") appeal from a judgment entered in the United States District Court for the District of Connecticut, Peter C. Dorsey, Judge, dismissing their claims under the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. Section 1962, against defendant The Norwich Savings Society ("Norwich") pursuant to Fed. R. Civ. P. 56 and against teh other defendants pursuant to Fed.R. Civ. P. 12(b)(6) and Fed. R. Civ. P. 9(b). On appeal, plaintiffs challenge every aspect of the court's rulings, including the court's denial of their motion to remand to state court after rmeoval, and they contend that at least they should have been allowed to amend their complaint. For the reasons below, we disagree.

To state a RICO cause of action, a plaintiff must allege "(1) that the defendant (2) through the commission of two or more acts (3) constituting a 'pattern' (4) of 'racketeering activity' (5) directly

or indirectly invests in, or maintains an interest in, or participates in (6) an 'enterprise' (7) the activities of which affect interests commerce." Moss v. Morgan Stanley, Inc., 719 F.2d 5, 17 (2d Cir. 1983), cert. denied, 465 U.S. 1025 (1984). For an individual defendant's conduct to have constituted a "pattern of racketeering activity," that defendant must have committed at least two racketeering acts constituting continuing criminal activity. 18 U.S.C. Section 1961(5); H.J. Inc v. Northwestern Bell Telephone Co., 492 U.S. 2229, 240 (1989).

Rytman's allegations do not meet these requiements. Through purporting to allege racketeering activity constituting violations of the Hobbs Act, 18 U.S.C. Section 1951, the complaint failed to plead any Hobbs Act violations. Allegations that a mortgagee "threatened to foreclose" on certain properties, or that a collateralized lender demanded delivery of the collateral in satisfaction of a defaulted loan do not suffice to allege extortion within the meaning of the Hobbs Act. Nor do such actions constitute acquisition or

maintenance of an interest in or control of a borrower's business within the meaning of 18 U.S.C. Section 1962(b).

Further, where the predicate acts of a RICO claim sound in fraud, the pleading of those acts must satisfy Rule 9(b)'s particularity requirements, specifying, inter alia, the statements that allegedly were false or misleading, the respect in whihc plaintiffs content the statements were fraudulent, and the purpose of the mailing within the defendant's allegedly fraudulent scheme. See McLaughlin v. Anderson, 962 F.2d 187, 190-194 (2d Cir. 1992). Conclusory statements such as "The conduct of the defendants involved the United States mail and interstate wires" (Complaint paragraph 10(mmmm) (1)), and "Colchester Foods, Inc., mailed through the Rytman v. Kofkoff Egg Farm Limited Partnership, Nos. 93-7061, -7177

United States mail the November 6, 1986 letter with fraudulent information relating to the Egg Supply Agreement" (Complaint paragraph 10 (hh) (1)), with not specification of either the representations

alleged to have been fraudulent or the respect in which they were alleged to have been false, are not sufficient.

We reject Rytman's contention that the district court was required to grant leave to amend the complaint. Though leave to file at least one amended pleading should normally be granted, see generally Foman v. Davis, 371 U.S. 178, 182 (1962); Oliver Schools, Inc. v. Foley, 930 F.2d 248, 253 (2d Cir. 1991); Fed R. Civ. P. 15(a); 3 Moore's Federal Practice paragraph 15.08[4], at 15-65 (2d ed. 1993), it is not an abuse of discretion to deny leave to amend where it appears that granting such permission is unlikely to be productive, see Foman v. Davis, 371 U.S. at 182 (denial not abuse of discretion where amendment would be futile). Thus, leave to amend may properly be denied "where . . . there is no merit in the proposed amendments, Health-Chem Corp. v. Baker, 915 F.2d 805, 810 (2d Cir. 1990); see also Ruffolo v. Oppenheimer & Co., 987 F.2d 129, 131 (2d Cir. 1992) (per curriam) (same), or where successive pleadings remain prolix and unintelligible, see, e.g., Prezzi

v. Schelter, 469 F.2d 691, 692 (2d Cir. 1972) (per curiam), cert. denied, 411 U.S. 935 (1973). Here, Rytman submitted to the court a proposed amended complaint, consisting of 121 pages (hardly the "short and plain" or "simple, concise, and direct" statement that Fed. R. Civ. P. 8(a) and (e) required), which the district court reviewed and concluded failed to cure the defects in the original complaint. This evaluation, and the conclusion that the proposed amendment would not be productive, did not constitute an abuse of discretion.

Nor, given the discovery already conducted over a

span of years in state-court proceedings involving these parties, was the court required to delay ruling on the present motions in order to permit Rytman to conduct additional discovery. See, e.g., Ruffolo v. Oppenheimer & Co., 987 F.2d at 131-32 (denial of leave to amend not abuse of discretion where plaintiff was a party to arbitration proceedings with one of the defendants for nearly two years, had

apparently unrestricted access to discovery, and had all of his discovery requests complied with); Billard v. Rockwell International Corp., 683 F.2d 51, 57 (2d Cir. 1982) (denial not an abuse of discretion where the plaintiff has had "access to full discovery" in a related case).

As to the summary judgment granted in Norwich's favor, absent from the record is any evidence from which an inference could be drawn that Norwich attempted to acquire or maintain an interest in Rytman's enterprise in an unlawful manner. The interest that Norwich acquired was one to which it was legally entitled--it owned a portion of a secured loan and merely sought to preserve its rights under that loan. See, e.g., Terry A. Lambert Plumbing, Inc. v. Western Security Bank, 934 F.2d 976, 981 (8th Cir. 1991) ("Bankers do not become racketeers by acting like bankers."); cf. Reves v. Ernst & Young, 1113 S.Ct. 1163, 1173 (1993) ("'[T]o conduct or participate directly or indirectly, in the conduct of [an] enterprise's affairs,' Section 1962(c), one must participate in the operation or management of the

enterprise itself."). Plaintiffs failed to come forward with evidence that could support their assertions of unlawful conduct. Accordingly, summary judgment was proper.

We have considered all of Rytman's contentions on this appeal and have found them to be without merit. The judgment of the district court is affirmed.

Rytman v. Kofkoff Egg Farm Limited Partnership, Nos. 93-7061, -7177

/s/ Amalya L. Kearse, U.S.C.J.

AMALYA L. KEARSE, U.S.C.J.

/s/ George C. Pratt, U.S.C.J.

GEORGE C. PRATT, U.S.C.J.

/s/ Roger J. Miner, U.S.C.J.

ROGER J. MINER, U.S.C.J.

N.B. THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND SHOULD NOT BE CITED OR OTHERWISE RELIED UPON IN UNRELATED CASES BEFORE THIS OR ANY OTHER COURT.

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DORSEY

MANDATE

UNITED STATES DISTRICT COURT OF APPEALS

FOR THE SECOND DISTRICT

- - - - - -

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the twenty-first day of June, one thousand nine hundred and ninety-three.

Present: HONORABLE AMALYA L. KEARSE,
HONORABLE GEORGE C. PRATT,
HONORABLE ROGER J. MINER,
Circuit Judges.

(filed June 21, 1993)

JULIUS RYTMAN, DORA RYTMAN, COLCHESTER EGG FARMS, INC., RYTMAN GRAIN, INC., JULIUS & DORA RYTMAN PROPRIETORSHIP, PINECREST DUCK FARM TRUST, AGRI-FINANCE, INC.,

Plaintiffs-Appellants,

- v. - Nos. 93-7061

-7177

KOFKOFF EGG FARM LIMITED PARTNERSHIP, SAMUEL KOFKOFF, ROBERT KOFKOFF, JOSEPH FORTIN, BLAIR HAGY, COLCHESTER FOODS, INC., CONNECTICUT NATIONAL BANK, NORWICH SAVINGS SOCIETY, FITCHVILLE REALTY, INC., BROWN, JACOBSON, JEWETT & LAUDONE, P.C., now known as Brown, Jacobson, Tillinghast, Lahan & King, P.C., MILTON L. JACOBSON, GLENN GORDON, PIERCE HOLLOW FARMS, INC.,

Defendants-Appellees.

Appeal from the United States District Court for the District of Connecticut.

This cause came on to be heard on the transcript of record from the United States District Court for the District of Connecticut, and was argued by counsel.

ISSUED AS MANDATE. 9/16/93

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

JULIUS RYTMAN, ET AL. :

-vs- :Docket No.

2:91CV01146(PCD)

KOFKOFF EGG FARM LIMITED :

PARTNERSHIP, ET AL. (Filed Sept. 3, 1992)

RULING ON PENDING MOTIONS

Plaintiffs, seven individuals or enterprises engaged in, inter alia, the egg farm and distribution business, grain business and other related businesses, allege violations of 18 U.S.C., Sections 1961-1968 (RICO). Defendants Connecticut National Bank, the "Kofkoff defendants" and the "Brown, Jacobson" defendants each move to dismiss. Additionally, defendant Norwich Savings Society moves for summary judgment.

BACKGROUND

The facts of this case, virtually impossible to glean or synthesize from the rambling narrative provided in the Complaint, are briefly summarized as follows. Plaintiff Julius Rytman and Dora Rytman

operated an egg farm and distribution business, as well as a grain mill. The Rytmans entered into several agreements with defendants Kofkoff Egg Farms Limited Partnership, Colchester Foods, and Fitchville Realty, all owned by defendants Robert Kofkoff, Samuel Kofkoff and Joseph Fortin, in which Colchester Foods agreed to buy the Rytmans' eggs. This agreement included a loan by Colchester to the Rytmans, secured by mortgages on some of the Rytmans' farms, as well as the Rytmans' chickens. CNB lent money to the Rytmans, secured by mortgages on the farms and the mill. Norwich Savings Society participated in one such mortgage with CNB. The defendant law firm, Brown, Jacobson, Jewett and Laudone, P.C., through principals Milton Jacobson and Glenn Gordon, represented the Rytmans until the events giving rise to this cause of action transpired.

By 1987, the plaintiffs were apparently in default on all of their loans. After Colchester Foods took possession of its collateral, in February of that year, plaintiffs and their debtors agreed to a work-out proposed by defendant Attorney Jacobson by

which the debt would be satisfied by distribution of their assets. In October of 1987, plaintiffs obtained new counsel and renounced the agreement. CNB thereupon filed a foreclosure action in state court, followed by a series of counter-suits by the Rytmans against all defendants.

DISCUSSION

A motion to dismiss involves a determination as to whether plaintiff has stated a claim upon which relief may be granted. That standard is more fully detailed in Fischman v. Blue Cross Blue Shield, 755 F.Supp. 528 (D. Conn. 1990).

Plaintiff's federal claim is articulated pursuant to 18 U.S.C. Sections 1961-1968, RICO, which directs plaintiff to satisfy two pleading burdens. "First, plaintiff must assert that the defendant has violated 18 U.S.C. Section 1962, the substantive RICO statute." Town of West Hartford v. Operation Rescue, 915 F.3d 92, 100 (2d Cir. 1990). This requires:

> (1) that the defendant (2) through the commission of two or more acts (3) constituting a "pattern" (4) of "racketeering activity" (5) directly or indirectly invests in, maintains an interest in, or participates in (6) an "enterprise" (7) the activities of which affect interstate commerce.

Id., quoting Moss v. Morgan Stanley, Inc., 719 F.2d 5, 17 (2d Cir. 1983), cert. denied, 465 U.S. 1025 (1984). Plaintiff must further allege that he was injured in his business or property by reason of a violating of Section 1962. See id. Plaintiffs contend that defendants, acting in concert and as an enterprise, defrauded plaintiffs, forced the sale of their business below market value, engaged in side-agreements affecting plaintiffs' interest while claiming to be acting in plaintiffs' best interests, and forced the aforementioned loan conditions and agreements upon plaintiffs knowing that this would lead to the eventual demise of plaintiffs' business. Plaintiffs allege that these acts were furthered through mail and wire fraud (18 U.S.C. Sections 1341 and 1343) and through extortionate means, in violation of 18 U.S.C. Section 1951, the Hobbs Act[1].

Notwithstanding the astounding length of the Complaint and the pleadings in this action,

1/Extortion, as defined by the Hobbs Act, "[m]eans the obtaining of property from another, with his consent, inducted by use of actual or threatened force, violence or fear, or under color of official right." 18 U.S.C. Section 1951(b) (2).

plaintiffs offer no factual allegations supporting the contention that defendants were engaged in a joint enterprise of any sort, or that defendants actions constituted more than courses of action necessitated by plaintiffs' defaults after an economic downturn in plaintiffs' businesses. A series of breaches of contract are alleged. Further, plaintiffs strongly indicate the extent of their displeasure with the way these events unfolded. However, such does not comprise a scheme to defraud plaintiffs through criminal acts.[2] Moreover, defendants' conduct, independent in origin even if conspiratorial in nature, has none of the commonality of purpose nor joinder of method to constitute a RICO enterprise. The work-out agreements were signed by the Rytmans with the advice of their lawyer, thus resulting in distribution of some of plaintiffs'

2/Notably, the Complaint identifies the "enterprise" required under 18 U.S.C. Section 1962 as being compromised of the plaintiffs (rather than the defendants) engaging in acts affecting interstate commerce. It is difficult to surmise how the alleged scheme ensued when plaintiffs seem unsure of whether it was they or the defendants who formed an enterprise.

assets to satisfy their creditors. The claim that defendants' conduct which led, with plaintiffs' agreement, to these distributions constituted extortionate threats (complaint paragraph 10, page 29) is without merit. Plaintiffs offer no evidence other than their conclusory statements, that these agreements, by which defendants obtained security interest in plaintiffs' assets in return for loans or in satisfaction of debt, undisputedly due and payable, were outside the realm of customary debt enforcement procedures. Though the agreements may have been signed while plaintiffs' business was "under economic duress" (Complaint paragraph 10, page 19), the duress was not of defendants' negligence and does not constitute extortion or fraud by the defendants. It suggests only that plaintiffs' business, simply and unfortunately met hard times. Accordingly, as plaintiffs fail to state a claim under RICO as a matter of law, defendants motions to dismiss and for summary judgment are granted.

CONCLUSION

For the foregoing reasons, defendants Milton

Jacobson, Glenn Gordon and Brown, Jacobson, Jewett and Laudone, P.C.'s motion to dismiss (Doc. #56); defendants Kofkoff Egg Farm Limited Partnership, Samuel Kofkoff, Robert Kofkoff, Joseph Fortin, Blair Hagy, Colchester Foods, Inc., Fitchville Realty, Inc., Pierce Hollow Farm's, Inc.'s motion to dismiss (Doc. # 58); defendant Connecticut National Bank's motion to dismiss (Doc. #60); and defendant Norwich Savings Society's motion for summary judgment (Doc. # 63) are granted.

SO ORDERED.

Dated at Hartford, Connecticut, this 31st day of August, 1992.

/s/ Peter C. Dorsey

Peter C. Dorsey

United States District Judge

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

JULIUS RYTMAN, et al. :

-vs- : Docket No. 2:91CV1146(PCD)

KOFKOFF EGG FARM LIMITED

PARTNERSHIP, et al. : (Filed Nov. 24, 1992)

O R D E R

Pertaining to the plaintiffs' motion to reconsider (document no. 111), the plaintiffs' request for leave to amend the complaint (document no. 114), the plaintiffs' motion for new trial (document no. 115-1 and 115-2), the plaintiffs' motion to alter or amend judgment to grant leave to amend judgment to grant leave to amend the complaint (document no. 117-1), the plaintiff's motion to alter or amend judgment granting defendants' motion to dismiss and for summary judgment (document no. 118), the plaintiffs'motion to open and/or vacate judgment (document no. 119), and the defendants' motion for costs (document no. 113):

The aforementioned motions are denied without prejudice. In view of the plaintiffs' appeal to the

Second Circuit, this court lacks subject matter jurisdiction over the motions currently pending in this case.

SO ORDERED.

Dated at New Haven, Connecticut, this 24th day of November, 1992.

/s/ Peter C. Dorsey

Peter C. Dorsey

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

JULIUS RYTMAN, et al. :

-vs- :Docket No. 2:91CV001146(PCD)

KOFKOFF EGG FARM LIMITED :

PARTNERSHIP, et al. :(Filed Feb. 5, 1993)

O R D E R

1. Plaintiffs' motion to reconsider (document #144) is granted. The Order dated November 24, 1992, is hereby vacated in view of the plaintiffs' subsequent withdrawal of their appeal (see United States Court of Appeals, Second Circuit, Mandate dated 12/11/93 and filed with this court 12/28/92). The motions denied without prejudice in the November 24 Order are hereby revived and decided on the merits as follows:

a) Plaintiffs' motion to reconsider (document #111) is granted. However, upon reconsideration, the court adheres to its prior ruling, which was based on the record before it in this matter, as plaintiffs have failed to raise any arguments or facts not previously

considered by the court.

b) Plaintiffs' request for leave to amend the complaint (document #114) is denied, as plaintiffs have failed to demonstrate that leave to amend is warranted under Fed. R. Civ. P. 15(a). The proposed amended complaint merely repeats, at greater length, the legal and factual allegations contained in the initial complaint, and hence fails to remedy the deficiencies prompting judgment for the defendants.

c) Plaintiffs' motion for new trial (documents #115-1 and 115-2) is denied.

d) Plaintiffs' motion to alter or amend judgment (document #117-1) is denied.

e) Plaintiffs' motion to alter or amend judgment (document #118) is denied,

(f) Plaintiffs' motion for stay of proceedings (document #142) is denied.

2. Plaintiffs' motion for stay of proceedings (document #142) is denied as moot.

3. Plaintiffs' motion for relief (document #151) is granted in part, only insofar as it pertains to

the November 24, 1992 Order, which is vacated as stated above. The motion for relief is denied with respect to the Ruling on Pending Motions dated August 31, 1992 and the Judgment dated September 9, 1992.

SO ORDERED.

Dated at New Haven, Connecticut, this 5th day of February, 1993.

/s/ Peter C. Dorsey

Peter C. Dorsey

United States District Judge

UNITED STATES COURT OF APPEALS

FOR THE

SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the 10th day of August on thousand nine hundred and ninety-three.

RYTMAN V. KOFKOFF EGG FARM

DOCKET NUMBERS 93-7061

93-7177

(Filed Aug. 10, 1993)

A petition for rehearing containing a suggestion that the action be reheard in banc having been filed herein by Appellants JULIUS RYTMAN, DORA RYTMAN, COLCHESTER EGG FARMS, INC., RYTMAN GRAIN, INC., JULIUS AND DORA RYTMAN PROPRIETORSHIP, PINECREST DUCK FARM TRUST, AND AGRI-FINANCE, INC.

Upon consideration by the panel that decided the appeal, it is

Ordered that said petition for rehearing is DENIED.

It is further noted that the suggestion for rehearing in banc has been transmitted to the judges of the court in regular active service and to any other judge that heard the appeal and that no such judge has requested that a vote be taken thereon.

FOR THE COURT,

ELAINE B. GOLDSMITH, Clerk

By:

/s/ Carolyn Clark Cambell

Carolyn Clark Cambell

Chief Deputy Clerk

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

JULIUS RYTMAN, ET AL	:	
	:	
Plaintiffs,	:	
	:	
V.	:	No. 291 CV 001146 (PCD)
	:	
KOFKOFF EGG FARM LIMITED	:	
PARTNERSHIP, ET AL	:	
	:	
Defendants,	:	December 24, 1992
		(Filed Dec. 24,1992)

MOTION FOR RELIEF FROM JUDGMENTS ORDER AND/OR PROCEEDINGS

Pursuant to Rule 60(b) of the Federal Rules of Civil Procedure, the plaintiffs seek relief from the following judgments, orders and/or proceedings of the District Court:

(1) The August 31, 1992 decision entitled Ruling on Pending Motions filed 9/3/92. (A copy of which is attached hereto and made part

hereof as Exhibit 1.)

(2) The September 9, 1992 Judgment entered on the basis of the August 31, 1992 decision entitled Ruling on Pending Motions. (A copy of which is attached hereto and made part hereof as Exhibit 2.)

(3) The November 24, 1992 Order. (A copy of which is attached hereto and made part hereof as Exhibit 3.)

The plaintiffs reasons for this motion are set forth in the Memorandum in Support of Rule 60 Motion to Relieve the Plaintiffs from a Judgment, Order or Proceeding and the Affidavit in Support of Rule 60(b) Motion of even date.

WHEREFORE, the plaintiffs pray that this Court vacate the judgments, orders and/or proceedings described herein.

THE PLAINTIFFS

By/s/ Donald R. Beebe

Donald R. Beebe, for:

BEEBE AND O'NEIL

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

JULIUS RYTMAN, ET AL	:	
	:	
Plaintiffs	:	
	:	
V.	:	NO. 291 CV 001146 (PCD)
	:	
KOFKOFF EGG FARM LIMITED	:	
PARTNERSHIP, ET AL	:	
	:	
Defendants	:	DECEMBER 24, 1992
		(Filed Dec. 24, 1992)

AFFIDAVIT IN SUPPORT OF RULE 60(b) MOTION

The undersigned, being duly sworn, deposes and says:

A. I am over eighteen (18) years of age and believe in the obligation of an oath.

B. I am an Attorney at Law admitted to practice before this Court and represent the Plaintiffs in the above captioned action.

C. On June 4, 1992, the defendant, Noriwch

Savings Society (hereinafter "NSS") filed a Summary Jugment Motion. The plaintiffs received the affidavit in support of NSS on June 17, 1992.

D. The plaintiffs sought to depose witnesses and sought additional time to conduct discovery and to prepare their response.

E. The Court scheduled a status conference on July 9, 1992 (hereinafter "status conference"). The status conference was scheduled with a Presiding Judicial Officer, Reed Murphy and the Honorable Peter Dorsey, Federal District Judge, joined the conference.

F. At the status conference, counsel for the plaintiffs raised several issues, the major issue being that plaintiffs needed more time to amass the testimony, documenatary evidence, and other competent proof to refute the issues raised by NSS's Summary Judgment Motion.

G. In response to this major issue to Presiding Judicial Officer Murphy said that all the plaintiffs needed to do was to swear to the RICO Case Statement. On this issues, Judge Dorsey noted that it if the plaintiffs "got caught with their pats down

around their ankles" (or words to that effect) and lost their motions, then they could file a Motion to Reconsider so that the situation could be rectified.

H. The plaintiffs and plaintiff's consel relied upon the representations made by Judge Dorsey and the Presiding Judicial Officer Murphy.

I. The plaintiff, Julius Rytman, along with plaintiffs' other submissions in opposition to the Summary Judgment Motion, swore to the RICO Case Statement and relied heavily on said statement.

J. On September 3, 1992, the Honorable Peter J. Dorsey entered an order relative to Motions to Dismiss and Summary Judgments. On September 9, 1992, the District Court entered a judgment on said orders. The plaintiffs filed a timely Motion to Reconsider (document no. 111), Request for Leave to Amend the Complaint (document no. 114), Motion for New Trial (document no. 115-1 and 115-2), Motion to Alter or Amend Judgment to Grant Leave to Amend the Complaint (document no. 117-1), Motion to Alter or Amend Judgment Granting Defendants' Motion to Dismiss and for Summary Judgment (document no. 118), Motion

to Open and/or Vacate Judgment (document no. 119) (hereinafter referred to as "Original Motions"). The plaintiffs also filed a memoranda in support of these motions.

K. The defendants challenged plaintiffs' motions. Included in their challenge were claims, among others, that they were inappropriate and that plaintiffs should have taken an appeal.

L. On October 8, 1992, the Plaintiffs took an appeal to the Second Circuit Court of Appeals. On November 24, 1992, the District Court denied the plaintiffs' motions without prejudice stating:

> "In view of the plaintiffs' appeal to the Second Circuit, this court lacks subject matter jurisdiction over the motions currently pending in this case."

(A copy of the Court's November 24, 1992 Decision is attached hereto and made part hereof as Exhibit A). The parties subsequent to November 24, 1992 withdrew their appeal by agreement stating that the "appeal appears to be premature." (A copy of the parties withdrawal is attached hereto and made part hereof as Exhibit B). A copy of the Second Circuit granting

the withdrawal is attached as Exhibit B2.)

M. The plaintiffs immediately informed the District Court of the withdrawal of the appeal (a copy of the December 4, 1992 letter to Judge Dorsey is attached as Exhibit C), filed a Motion to Reconsider the November 24, 1992 Order on December 4, 1992 (a copy of which is attached as Exhibit D), and re-filed and/or renewed their motions denied without prejudice (a copy of Plaintiffs' Re-filing of and/or Renewal of Motions (without exhibits) is attached hereto and made part hereof as Exhibit E).

N. By documents dated December 17 and 18, 1992 (and received by the plaintiffs on December 21, 1992), Milton L. Jacobson, Glenn M. Gordon and Brown Jacobson Jewett and Laudone, P.C. (hereinafter collectively "Brown Jacobson") and the defendants, Kofkoff Egg Farm Limited Partnership, Pierce Hollow Farms, Inc., Fitchville Realty, Inc., Samuel Kofkoff, Robert Kofkoff, Joseph Fortin and Blair Hagy (hereinafter collectively the "Kofkoff Defendants") objected to the plaintiffs Motion to Reconsider,

dated December 4, 1992. Brown Jacobson also objected to the "Plaintiffs' Re-Filing of and/or Renewal of Motion", dated December 4, 1992. The Kofkoffs also objected to the Rule 59 Motions.

O. In the "Kofkoff Defendants' Objection to Plaintiffs' Motion to Reconsider", dated December 18, 1992, the Kofkoff's claim inter alia, the following:

> "The plaintiffs' Motion for Reconsideration dated September 18, 1992 under Local Rule 9(e) was inappropriate and untimely, since both the Local Rules and the Federal Rule of Civil Procedure do not provide for reconsideration of a ruling once judgment has entered."

P. In Brown Jacobson's "Objection to Plaintiffs' Re-Filing of and/or Renewal of Motions", Brown Jacobson object inter alia, "on the grounds that no such motion or procedure is authorized by the Federal Rules of Civil Procedure."

Q. It is the Plaintiffs position that:

1. That the District Court had subject matter jurisdiction to rule on the merits of their Original Motions when it held that it did not have subject matter jurisdiction on November 24, 1992 on the basis of clear authority from the United States Supreme

Court and the Second Circuit and Rule 4 of the Appellate Rules (Griggs v. Provident Consumers Discount Company, 459 U.S. 56, 103 S. CT 400 (1982); Fisher v. Klein, 873 F.2d 626 (2d Cir. 1989); Rados v. Celotex Corp., 809 F.2d 170 (2d Cir. 1986); Sutliff, Inc., v. Donavan Companies, Inc., 727 F.2d 648 (7th Cir. 1984); Schauner v. Coombe, 108 F.R.D. 180 (W.D.N.Y. 1985). See also Northwestern National Insurance Co. v. Alberts, 937 F. 2d 77 (2d Cir. 1991); McCowan v. Sears Roebuck and Co., 908 F.2d 1099 (2d Cir. 1990); National Advertising Co. v. Babylan, 900 F.2d 551 (2d Cir. 1990); Wilson v. Great American Industries, 770 F Supp. 85 (N.D.N.Y. 1991.). Therefore, the District Court was mistaken as to the law on that issue and the order entered on November 24, 1992 should be vacated and plaintiffs relieved from its affect.

2. That any impediment to the District Court's jurisdiction has been removed by the withdrawal of the appeal to the Second Circuit Court of Appeal by consent of the parties (Exhibit B1) and the subsequent granting of the withdrawal by the Second

Circuit (Exhibit B2).

3. That the District Court can now rule on the merits of the Plaintiffs' Original Motions without further action of any party.

4. That the District Court can rule on the merits of the Plaintiffs Original Motions based upon the Plaintiffs' Motion to Reconsider, dated December 4, 1992.

5. That the District Court can rule on the Plaintiffs' Refiling of and/or Renewal of Motions, dated December 4, 1992.

6. That the District Court was mistaken as to the law and facts raised by the Motions to Dismiss and Summary Judgment when the Court filed its decision on September 3, 1992 and entered judgment on September 9, 1992.

7. That a misunderstanding may have resulted from a chambers conference with the Honorable Peter Dorsey, Federal District Court Judge and the presiding Judicial Officer Murphy on July 9, 1992 or as a result of said conference a mistake, inadvertise, or excusable neglect occurred as a

result of said conference.

8. That the plaintiffs were surprised that the District Court granted the Motions to Dismiss and the Summary Judgment Motion on the basis that it did and in the manner that it did for the reasons set forth in the Plaintiffs' Original Motions and the Memoranda filed by the plaintiffs in support of the Original Motions. A complete set of these motions and memoranda accompany this mtion.

9. A motion made pursuant to Rule 60(b) is appropriate to correct these issues and to relieve the plaintiffs from the judgment, order, and/or proceeding. E.g. Barum v. Clark, 927 F.2d 698 (2d Cir. 1991); Chanofskey v. Chase Manhattan Corporation, 530 F.2d 470 (2d Cir. 1976); Schildaus v. Moe, 335 F.2d 529 (2d Cir. 1964); Tarkington v. U.S. Lines Co., 222 F.2d 358 (1955).

/s/Donald R. Beebe

Donald R. Beebe

Subscribed and sworn to before me

this 24th day of December, 1992.

/s/Renee M. LaCharite

Notary Public/My Comm. Exp. 3-31-95

FEDERAL RULES OF CIVIL PROCEDURE

Rule 9. Pleading Special Matters

(b) Fraud, Mistake, Condition of the Mind. In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other condition of mind of a person may be averred generally.

Rule 12

(b) How Presented. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted, (7) failure to join a party under Rule 19. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, the adverse party may assert at the trial any defense in

law or fact to that claim for relief. If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

(f) Motion to Strike. Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within 20 days after the service of the pleading upon the party or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

FEDERAL RULES OF CIVIL PROCEDURE

Rule 15. Amended and Supplemental Pleadings.

(a) Amendments. A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served. Otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading or within 10 days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.

FEDERAL RULES OF CIVIL PROCEDURE

Rule 56. Summary Judgment

(f) When Affidavits are Unavailable. Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

FEDERAL RULES OF CIVIL PROCEDURE

Rule 59. New Trials; Amendment of Judgments

(e) Motion to Alter or Amend a Judgment. A motion to alter or amend the judgment shall be served not later than 10 days after entry of the judgment.

FEDERAL RULES OF CIVIL PROCEDURE

Rule 81

(c) Removed Actions. These rules apply to civil actions removed to the United States district courts from the state courts and govern procedure after removal. Repleading is not necessary unless the court so orders. In a removed action in which the defendant has not answered, the defendant shall answer or present the other defenses or objections available under these rules within 20 days after the receipt through service or otherwise a copy of the initial pleading setting forth the claim for relief upon which the action or proceeding is based, or within 20 days after the service of summons upon such initial pleading, then filed, or within 5 days after the filing of the petition for removal, whichever period is longest. If at the time of removal all necessary pleadings have been served, a party entitled to trial by jury under Rule 38 shall be accorded it, if the party's demand therefor is served within 10 days after the petition for removal is filed if the party is the petitioner, or if not the petitioner within 10

days after service on the party of the notice of filing the petition. A party who, prior to removal, has made an express demand for trial by jury in accordance with state law, need not make a demand after removal. If state law applicable in the court from which the case is removed does not require the parties to make express demands in order to claim trial by jury, they need not make demands after removal unless the court directs that they do so within a specified time if they desire to claim trial by jury. The court may make this direction on its own motion and shall do so as a matter of course at the request of any party. The failure of a party to make demand as directed constitutes a waiver by that party of trial by jury.

18 U.S.C.

Section 1341. Frauds and swindles

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for the unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined not more than $1,000 or imprisoned not more than five years, or both.

18 U.S.C.

Section 1343. Fraud by wire, radio or television

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined not more than $1,000 or imprisoned not more than five years, or both.

18 U.S.C.

Section 1961. Definitions

As used in this chapter-

(1) "racketeering activity" means (A) any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in narcotic or other dangerous drugs, which is chargeable under State law and punishable by imprisonment for more than one year; (B) any act which is indictable under any of the following provisions of title 18, United States Code: sections 471, 472, and 473 (relating to counterfeiting), section 659 (relating to theft from interstate shipment) if the act indictable under section 659 is felonious, section 664 (relating to embezzlement from pension and welfare funds), sections 891-894 (relating to extortionate credit transactions), section 1029 (relating to fraud and related activity in connection with access devices), section 1084 (relating to the transmission of gambling information), section 1341 (relating to mail fraud), section 1343 (relating to wire fraud),

section 1344 (relating to financial institution fraud), sections 1461-1465 (relating to obscene matter), section 1503 (relating to obstruction of justice), section 1510 (relating to obstruction of criminal investigations), section 1511 (relating to the obstruction of State or local law enforcement), section 1512 (relating to tampering with a witness, victim, or an informant), section 1513 (relating to retaliating against a witness, victim, or an informant), section 1951 (relating to interference with commerce, robbery, or extortion), section 1952 (relating to racketeering), section 1953 (relating to interstate trasportation of wagering paraphernalia), section 1954 (relating to unlawful welfare fund payments), section 1955 (relating to the prohibition of illegal gambling businesses), section 1956 (relating to the laundering of monetary instruments), section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity), section 1958 (relating to use of interstate commerce failities in the commission of murder-for-hire), sections 2312 and 2313 (relating to

interstate transportation of stolen motor vehicles), sections 2314 and 2315 (relating to interstate transportation of stolen property), section 2321 (relating to trafficking in certain motor vehicles or motor vehicle parts), sections 2341-2346 (relating to trafficking in contraband cigarettes), sections 2421-24 (relating to white salve traffic), (C) any act which is indictable under title 29, United States Code, section 186 (dealing with restrictions on payments and loans to labor organizations) or section 501(c) (relating to embezzlement from union funds), (D) any offense involving fraud connected with a case under title 11, fraud in the sale of securities, or felonious manufacture, importation, receiving, concealment, buying, selling or otherwise dealing in narcotic or other dangerous drugs, punishable under any law of the United States, or (E) any act which is indictable under the Currency and Foreign Transactions Reporting Act;

18 U.S.C.

Section 1962.

(b) It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

(c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprises's affairs through a pattern of racketeering activity or collection of unlawful debt.

(d) It shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section.

CONNECTICUT GENERAL STATUTES

Section 53a-119. Larceny defined. A person commits larceny when, with intent to deprive another of property or to appropriate the same to himself or a third person, he wrongfully takes, obtains or withholds such property from an owner. Larceny includes, but is not limited to:

(1) Embezzlement. A person commits embezzlement when he wrongfully appropriates to himself or to another property of another in his care or custody.***

(3) Obtaining property by false promise. A person obtains property by false promise when, pursuant to a scheme to defraud, he obtains property of another by means of a representation, express or implied, that he or a third person will in the future engage in particular conduct, and when he does not intend to engage in such conduct or does not believe that the third person intends to engage in such conduct. In any prosecution for larceny based upon a false promise, the defendant's intention or belief that the promise would not be performed may not be established by or inferred from the fact alone that such promise

was not performed.***

(5) Extortion. A person obtains property by extortion when he compels or induces another person to deliver such property to himself or a third person by means of instilling in him a fear that, if the property is not so delivered, the actor or another will: (A) Cause physical injury to some person in the future; or (B) cause damage to property; or (C) engage in other conduct constituting a crime; or (D) accuse some person of a crime or cause criminal charges to be instituted against him; or (E) expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule; or (F) cause a strike, boycott or other collective labor group action injurious to some person's business; except that such a threat shall not be deemed extortion when the property is demanded or received for the benefit of the group in whose interest the actor purports to act or (G) testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or (H) use or abuse his position as a

public servant by performing some act within or related to his official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely; or (I) inflict any other harm which would not benefit the actor.***

CONNECTICUT GENERAL STATUTES

Section 22-323a. Intensive poultry farming. Regulations. Inspection for noncompliance.(a) As used in this section, intensive poultry farming means the raising or maintaining of more than twenty thousand fowl, fed primarily by methods other than grazing, and confined within one or more pens or buildings. The commissioner of agriculture shall adopt regulations in accordance with the provisions of chapter 54 concerning acceptable management practices of intensive poultry farming including transportation of poultry waste on public roads.

(b) The commissioner of agriculture may inspect or cause to be inspected by his agents any intensive poultry operation for compliance with the regulations adopted under subsection (a) of this section. He may issue orders as he deems necessary for the correction of such noncompliance including the quarantine of premises and fowl.

CONNECTICUT GENERAL STATUTES

Section 22-323a-1. Definitions.

"Commissioner" means the commissioner of agriculture or his authorized agent.

"Department" means department of agriculture.

"Poultry" means all domesticated fowl.

"Premises" means that portion of a tract of land with the building thereon or a part of a building with its grounds or other appurtenances which is used for intensive poultry farming.

"Waste management system" means any structure, facility, or equipment for the storage, treatment, or disposal of waste products from an intensive poultry farm, and includes the methods of operation of such systems.

CONNECTICUT GENERAL STATUTES

Section 22-323a-2. All intensive poultry farming operations shall meet the following minimum acceptable management practices:

(a) Premises upon which intensive poultry farms are located shall be kept free from accumulations of garbage, rubbish, vegetative growth or any other material which because of its character, condition, or improper storage constitutes or may become a breeding place or favorable habitat for flies or vermin, or may cause a threat to the environment or public health, or constitutes a public nuisance.

(b) The premises on which intensive poultry farms are operated shall be maintained in such a manner as to minimize soil erosion and sedimentation of water courses.

(c) The area around buildings must be sloped to promote rapid runoff of surface water and prevent puddles and wet areas from forming.

(d) No structure housing poultry, farm wastes, or farm equipment used for intensive poultry farming shall be constructed or maintained so as to allow

water or waste to move in or out of the structure when such condition constitutes or may constitute a threat to the environment or public health, or constitute a public nuisance.

CONNECTICUT GENERAL STATUTES

Section 22-323a-3. Water quality

Waste management systems including but not limited to lagoons and subsurface disposal systems shall be properly constructed, operated and maintained so as not to create a threat to the environment or public health, or constitute a public nuisance.

CONNECTICUT GENERAL STATUTES

Section 22-323a-4. Disposal of waste eggs

Waste eggs shall be stored and disposed of in a manner so as not to create a threat to the environment or public health, or constitute a public nuisance.

CONNECTICUT GENERAL STATUTES

Section 22-323-a-5. Fly control

Intensive poultry farms shall be operated and maintained so as not to be a breeding place for excessive fly populations. Excessive fly populations shall be determined by the commissioner by examining fly specs on white cards within the poultry house or by examining the manure for larva or other appropriate methods. Acceptable readings shall be determined by the commissioner with the advice and assistance of the state entomologist.

CONNECTICUT GENERAL STATUTES

Section 22-323a-6. Manure management

(a) Manure shall be stored, managed, and disposed of in a manner which will minimize and control the breeding of flies and vermin, minimize and control offensive odors, and not create a threat to the environment or public health, or constitute a public nuisance.

(b) Manure transported over public highways on farm vehicles shall be in leak proof containers, spreaders, or vehicles. Manure transported in other than farm vehicles shall be in leak proof containers and be covered if necessary to prevent debris from blowing or falling out of the transporting vehicle.

(c) Any manure spilled on public roads or dumped on any property other than that on which the intensive poultry farm is located, without the owner's permission, shall be removed immediately by the vehicle owner or operator.

CONNECTICUT GENERAL STATUTES

Section 53a-122. Larceny in the first degree: Class B felony.

(a) A person is guilty of larceny in the first degree when he commits larceny as defined in section 53a-119 and: (1) The property or service, regardless of its nature and value, is obtained by extortion, (2) the value of the property or service exceeds ten thousand dollars, (3) the property consists of a motor vehicle, the value of which exceeds ten thousand dollar, or (4) the property is obtained by defrauding a public community, and the value of each property exceeds two thousand dollars.

(b) In any prosecution under subdivision (3) of subsection (a) of this section, evidence of (1) forcible entry, (2) forcible removal of ignition or (3) alteration, mutilitation or removal of a vehicle identification number shall be prima facie evidence of a larcenous intent.

(c) Larceny in the first degree is a class B felony.

CONNECTICUT GENERAL STATUTES

Section 53a-123 Larceny in the second degree: Class C felony.

(a) A person is guilty of larceny in the second degree when he commits larceny as defined in section 53a-119 and: (1) The property consists of a motor vehicle, the value of which exceeds five thousand dollars, (2) the value of the property or service exceeds five thousand dollars, (3) the property, regardless of its nature or value, is taken from the person of another, or (4) the property is obtained by defrauding a public community, and the value of such property is two thousand dollars or less.

(b) In any prosecution under subdivision (1) of subsection (a) of this section, evidence of (1) forcible entry, (2) forcible removal of ignition or (3) alteration, mutilation or removal of a vehicle identification number shall be prima facie evidence of a larcenous intent.

(c) Larceny in the second degree is a class C felony.

CONNECTICUT GENERAL STATUTES

Section 53a-124. Larceny in the third degree: Class D felony.

(a) A person is guilty of larceny in the third degree when he commits larceny as defined in section 53a-119 and: (1) The property consists of a motor vehicle, the value of which is five thousand dollars or less; (2) the value of the property or service exceeds one thousand dollars; (3) the property consists of a public record, writing or instrument kept, held or deposited according to law with or in the keeping of any public office or public servant; or (4) the property consists of a sample, culture, microorganism, specimen, record, recording, document, drawing or any other article, material, device or substance which consitutes, represents, evidences, reflects or records a secret scientific or technical process, invention or formula or any phase or part thereof. A process, invention or formula is "secret" when it is not, and is not intended to be, available to anyone other than the owner thereof or selected persons having access thereto for limited purposes

with his consent, and when it accords or may accord the owner an advantage over competitors or other pesons who do not have knowledge or the benefit thereof.

(b) In any prosecution under subdivision (1) of subsection (a) of this section, evidence of (1) forcible entry, (2) forcible removal of ignition or (3) alteration, mutilation or removal of a vehicle identification number shall be prima facie evidence of a larcenous intent.

(c) Larceny in the third degree is a class D felony.

93-766

Supreme Court, U.S.
NOV - 3 1993

In The

Supreme Court of the United States

October Term, 1993

JULIUS RYTMAN, DORA RYTMAN, COLCHESTER EGG FARMS, INC., RYTMAN GRAIN, INC., JULIUS AND DORA RYTMAN PROPRIETORSHIP, PINECREST DUCK FARM TRUST, AND AGRI-FINANCE, INC.

Petitioners,

vs.

KOFKOFF EGG FARM LIMITED PARTNERSHIP, SAMUEL KOFKOFF, ROBERT KOFKOFF, JOSEPH FORTIN, BLAIR HAGY, COLCHESTER FOODS, INC., PIERCE HOLLOW FARMS, FITCHVILLE REALTY, INC., CONNECTICUT NATIONAL BANK, NORWICH SAVINGS SOCIETY, BROWN, JACOBSON, JEWETT & LAUDONE, P.C. N/K/A BROWN, JACOBSON, TILLINGHAST, LAHAN & KING, P.C., MILTON JACOBSON, AND GLENN GORDON

Respondents.

Petition For Writ of Certiorari To The United States Court of Appeals For The Second Circuit

APPENDIX TO PETITION FOR WRIT OF CERTIORARI VOLUME I

DONALD R. BEEBE
BEEBE AND O'NEIL
335 Washington Street
Norwich, CT 06360
(203) 889-5266

Counsel of Record for Petitioners

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

JULIUS RYTMAN, ET AL,	:	
	:	
Plaintiffs	:	
	:	
V.	:	NO. 291 CV 001146 (PCD)
	:	
KOFKOFF EGG FARM LIMITED	:	
PARTNERSHIP, ET AL	:	
	:	
Defendants	:	SEPTEMBER 23, 1992
		(Filed Sept. 23, 1992)

FIRST AMENDED COMPLAINT

Plaintiffs Julius Rytman, Dora Rytman, Colchester Egg Farms, Inc., Rytman Grain, Inc., Julius and Dora Rytman Proprietorship, Pine Crest Duck Farm Trust, Inc., Agri-Finance, Inc. by their attorneys, hereby complain of defendants as follows:

JURISDICTION AND VENUE

1. Jurisdiction of this Court is founded upon

the provisions of Chapter 96, United States Code, Racketeer Influenced and Corrupt Organizations (RICO), Title 18, U.S.C. Sections 1961 through 1964. Specifically, this action is brought under 18 U.S.C. Section 1964(c), which provides that any person injured in their person or property by reason of a violation of 18 U.S.C. Section 1962 may sue in the United States District Court for three-fold damages, attorneys' fees and costs.

2. Venue in this Court is founded upon 18 U.S.C. Section 1965(a) in that all defendants reside in the District of Connecticut, or may be found in that District, or are transacting business, directly or through agents, in that District.

3. All of the defendants' operation in the individual and corporate businesses owned by the plaintiffs have involved the use of the United States mail and telephone lines, and the transmittal across state lines and interstate commerce of various products, representation, telephone calls, agreements, communications, contracts, and other

business matters, transactions, and dealings. Accordingly, plaintiffs, defendants, and the "enterprise" are within the flow of interstate commerce. During the relevant period, there has been a consistent continuity of movement of said products and services of said defendants and/or effecting interstate commerce.

PARTIES

PLAINTIFFS

4. Plaintiffs Julius Rytman and Dora Rytman are residents of the State of Connecticut and at all times relevant herewith were principals and shareholders of the various other plaintiff entities described herein. Julius and Dora Rytman owned the following corporate entities and business entities: Colchester Egg Farms, Inc., Rytman Grain, Inc., Julius and Dora Rytman Proprietorship, Pine Crest Duck Farm Trust, Inc., Agri-Finance, Inc. and in 1986 through 1987, High Tech Feeds, Inc. which operated the grain mill formerly operated by Rytman Grain, Inc. on Murphy Road in Franklin, Connecticut. The

plaintiffs, Julius Rytman and Dora Rytman also owned extensive real estate consisting of a grain mill and assicated buildings, chicken farms, commerical land including egg distribution bulding, residential land and buildings and residential building land.

5. The plaintiff, Colchester Egg Farms, Inc. was a Connecticut corporation with a principal place of business on Murphy Road in Franklin, Connecticut which was engaged primarily in the egg distribution business.

6. Plaintiff Rytman Grain, Inc. was a Connecticut corporation with a principal place of business on Murphy Road in Franklin, Connecticut which was engaged in the principal business of selling grain.

7. Plaintiffs Julius and Dora Rytman Proprietorship were a proprietorship made up of the plaintiffs Julius Rytman and Dora Rytman which owned chickens that produced eggs and sold fowl.

8. Plaintiffs Pine Crest Duck Farm Trust was a trust formed in Massachusetts for the purpose of

raising fowl and ducks and dressing the same.

9. Plaintiff Agri-Finance, Inc. was a corporation formed by Julius Rytman and Dora Rytman and located on Murphy Road in Franklin, Connecticut for the purpose of handling collections of receivables and other financial transactions for the other plaintiffs.

ENTERPRISE

10. The plaintiffs were engaged in an enterprise that consisted of integrated chicken farms, an egg production business, egg distribution business and grain mill facility and extensive real estate holdings comprised of all of the plaintiffs. Julius Rytman, Dora Rytman, Colchester Egg Farm, Inc., Rytman Grain, Inc., Julius and Dora Rytman Proprietorship, Pinecrest Duck farm Trust, Agri-Finance, Inc. and the rights to operate the grain mill on Murphy Road in Franklin, Connecticut, by virtue of having a special relationship with High Tech Feeds, Inc. and by virtue of Julius Rytman and Dora Rytman being the sole shareholder of High Tech

Feeds, Inc. The enterprise raised chickens, produced and sold eggs and produced grain for the plaintiffs' farms and other customers. Chickens, eggs and grain were sold through interstate commerce. The enterprise was also engaged in the acquisition of property, the sale of property and the sale of building lots and other properties.

DEFENDANTS AND THEIR

ASSOCIATION WITH THE ENTERPRISE

A. DEFENDANTS collectively referred to herein as "KOFKOFF DEFENDANTS"

11. Defendant Kofkoff Egg Farms Limited Partnership is a Connecticut limited partnership with a principal place of business on Schwartz Road, Bozrah, Connecticut. Kofkoff Egg Farms Limited engaged in a joint venture with Colchester Egg Farms, Inc. distributing eggs throughout New England.

12. Defendants Samuel Kofkoff, Robert Kofkoff and Joseph Fortin are residents of Connecticut and at all times relevant hereto were principals in Kofkoff Egg Farms Limited Partnership, Fitchville Realty,

Inc., Pierce Hollow Farms, Inc. and for almost all times relevant hereto, Colchester Foods, Inc. Samuel Kofkoff had been a long time friend of the plaintiffs, Julius Rytman and Dora Rytman. Additionally, Samuel Kofkoff was also a member of the Advisory Board of the Connecticut National Bank and a borrower at CNB. Robert Kofkoff is also an attorney licensed to practice in Connecticut. Additionally, Joseph Fortin is a former employee of Colchester Egg Farms, Inc. Further these men were principals in the above-referenced businesses which, as described herein, were associated with the enterprise.

13. Defendant Blair Hagy is a resident of the State of Connecticut, was a former employee of Rytman Grain, Inc. and Julius Rytman and Dora Rytman Proprietorship, Colchester Egg Farms, Inc. From May 3, 1986 Blair Hagy was associated with the enterprise as an employee of Colchester Foods, Inc., Kofkoff Egg Farms Limited Partnerhip, Pierce Hollow Farms, Inc. and Fitchville Realty, Inc.

14. The defendant Colchester Foods, Inc. was a

Connecticut corporation formed on or about May 3, 1986 for the purpose of acquiring certain assets of Colchester Egg Farms, Inc. Colchester Foods association with The Enterprise covered many agreements. Colchester Foods, Inc. is a tenant in Dora Rytman's property which is the egg distribution building. Colchester Foods, Inc. was a party to the Egg Commission Contracts as described herein, the Egg Supply Agreement described herein with the plaintiffs Julius Rytman and Dora Rytman and Colchester Egg Farms, Inc. Colchester Foods also held a mortgage on the property known as the Colchester Egg or Food Building located on Murphy Road and approximately 8.5 acres associated therewith, the Rytman farm known as the Hilltop Farm in Franklin, Connecticut, the Rytman farm known as the Jalkanen Farm in Voluntown, Connecticut, the Rytman Farm known as the Robella Farm in Voluntown, Connecticut, the Rytman Farm known as the Schwartz Farm in Lebanon, Connecticut. The defendant Colchester Foods, Inc. is an egg distribution company.

15. Defendant Pierce Hollow Farms, Inc. is a Connecticut corporation owned by Samuel Kofkoff, Robert Kofkoff and Joseph Fortin and is a Connecticut corporation with a principal place of business on Schwartz Road in Bozrah, Connecticut. Pierce Hollow Farms, Inc. raised chickens and produced eggs and is associated with the enterprise in that it acquired through the conduct of other defendants assets of the enterprise and acquired other benefits.

16. The defendant Fitchville Realty, Inc. is a Connecticut corporation with a principal place of business on Schwartz Road in Bozrah, Connecticut and was formed in September of 1987 for the purpose of acquiring assets of the plaintiffs' enterprise. The principals of said corporation are Samuel Kofkoff, Robert Kofkoff and Joseph Fortin.

B. THE BANKS

17. The defendant Connecticut National Bank (hereinafter "CNB") is a banking corporation with a principal place of business at 777 Main Street, Hartford, Connecticut. For all times relevant herein

CNB is associated with the enterprise in that it provided financing to the plaintiffs for the operation of their enterprise and related activities ancillary thereto and held mortgages and security interest on the enterprise properties, as the beneficiary of guarantees and cross collateralizations of the various plaintiffs on its financial agreements with the plaintiffs and others. Further, through the conduct alleged herein, controlled the enterprise. CNB officer, Charles Hayes (who was the Kofkoff defendants' loan officer) was a member of the Norwich Community Development Corporation (hereinafter NCDC) a community development corporation that was handling the construction of a road near one of the plaintiffs' properties in 1987.

18. The Norwich Savings Society (hereinafter "NSS") was a participant with the Connecticut National Bank in a debt ultimately guaranteed by the plaintiff and secured by cross- collateralization obtained by Connecticut National Bank on the

enterprise's assets. The Norwich Savings Society also held a mortgage on property that became the property of the plaintiffs known as Dydo Farm a/k/a the Lisbon Estates. NSS also held a mortgage on personal property of Aaron Spandorf a gurarantor of the participant loan described above. NSS president, Daniel Dennis was also the president of the NCDC and on the executive committee.

C. THE ATTORNEYS

19. The defendant, Attorney Milton L. Jacobson is a Connecticut resident and an attorney at law who represented the plaintiffs Julius Rytman and Dora Rytman and their various business entities and was associated with the enterprise for over 35 years and had been a lifelong friend of Julius Rytman and Dora Rytman. The defendant Jacobson is a principal in the law firm of Brown, Jacobson, Jewett and Laudone, P.C., now know as Brown, Jacobson, Tillinghast, Lahan & King, P.C., a professional corporation with a principal place of business at 22 Courthouse Square, Norwich, Connecticut. The defendant Milton Jacobson

also represented personally and through his law firm, Brown, Jacobson, Jewett and Laudone, P.C., the Kofkoff defendants from December of 1986 forward and the Kofkoff defendants in matters relating directly to and adversely to the plaintiff interests from February 1987 forward while he was representing the plaintiffs in the same matters. Milton L. Jacobson was also a shareholder of Colchester Egg Farms, Inc. in a trustee capacity for the children of Julius Rytman and Dora Rytman. Milton L. Jacobson served at various times as an officer and director of some of the corporate plaintiffs. Milton L. Jacobson also was the attorney in fact for Julius Rytman and Dora Rytman. Milton L. Jacobson was a member of the NCDC and he and his law firm represented NCDC relative to the construction of the road next to one of plaintiffs' farms.

20. The defendant Attorney Glenn Gordon is an attorney at law who represented plaintiffs from at least 1984 forward and was a principal in the law firm of Brown, Jacobson, Jewett and Laudone, P.C.,

now known as Brown, Jacobson, Tillinghast, Lahan & King, P.C., a professional corporation with a principal place of business at 22 Courthouse Square in Norwich, Connecticut. The defendant Glenn Gordon also represented the interests of the Kofkoff defendants starting in December of 1986 forward. In February of 1987 forward, the defendant Glenn Gordon represented the interests of the Kofkoff defendants in matters related to and adverse to the plaintiffs while he was representing the plaintiffs in the same matters. Glenn Gordon also was the attorney-in-fact (held a po. of attorney) for Julius Rytman and Dora Rytman. Glenn Gordon's law firm, Brown, Jacobson, Jewett & Laudone, P.C. represented NCDC relative to the construction of the road next to one of the plaintiffs' farms.

21. The defendant Brown, Jacobson, Jewett and Laudone, P.C., now known as Brown, Jacobson, Tillinghast, Lahan & King, P.C. is a professional corporation with the principal place of business at 22 Courthouse Square, Norwich, Connecticut, which is

a Connecticut law firm. At all times relevant herein a principal and an attorney of Brown, Jacobson, Jewett and Laudone, PC. was also a Director of the Norwich Savings Society. For all times relevant herein the law firm of Brown, Jacobson, Jewett, and Laudone, P.C. represented as an attorney the Norwich Savings Society and Connecticut National Bank. Brown, Jacobson, Jewett, and Laudone, P.C. also, from December 1986 forward, represented the Kofkoff defendants and from February 1987 forward represented the Kofkoff defendants' interests in matters directly relating to and adverse to the interests of the plaintiffs while it represented the plaintiffs in the same matters. Brown, Jacobson, Jewett and Laudone, P.C. represented NCDC in general and NCDC relative to the construction of a road next to one of the plaintiffs' farms.

22. All defendants, except Milton L. Jacobson, Glenn M. Gordon and Brown, Jacobson, Jewett and Laudone, P.C. were associated with the enterprise as parties to the October-November 1987 Agreement which

provided for the fraudulent deceitful and coercive acquisition of the enterprise's the assets by Fitchville Realty, Inc. and Colchester Foods, Inc.

23. Defendants Milton L. Jacobson, Glenn Gordon and Brown, Jacobson, Jewett and Laudone, P.C. were instrumental in aiding and abetting the other defendants in the defrauding and extorting of the enterprise, which major overt act and event was the signing and partial execution of the hereinafter described October 1987 Agreement.(This Agreement was signed between October - November 1987)

NON-PARTIES RELEVANT TO THIS ACTION

24. NORWICH COMMUNITY DEVELOPMENT CORPORATION

The Norwich Community Development Corporation (herein after "NCDC") is a corporation that owns an Industrial Park next to properties owned by the plaintiffs enterprises namely The Hilltop Farm and The Riley Farm.

The NCDC was in the process of trying to build a road directly next to The Hilltop Farm and Riley Farm in 1986 and 1987. Once the road was

built, the enterprises' Hilltop Farm and Riley Farm would have increased significantly in value.

GENERAL FACTS OCCURRING PRIOR TO THE EVENTS OF OCTOBER 1984

A. CONNECTICUT VALLEY EGG CONTRACT:

On August 7, 1978 Rytmans' Colchester Egg entered into an agreement with Connecticut Valley Egg Company, Inc. (hereinafter "Conn. Valley Egg") wherein Colchester Egg, Inc. acquired the right to sell eggs to customers of Connecticut Valley Egg Company, Inc.

The Conn. Valley Egg Contract provides, in part, as follows:

(a) Colchester Egg, Inc. shall service and deliver eggs to Conn. Valley Egg customers starting September 1, 1978 for a period of nine (9) years from September 1, 1978 to August 31, 1987.

(b) Colchester Egg, Inc. shall pay to Conn. Valley Egg the sum of one and one-half cents (1-1/2¢) for each dozen eggs that Colchester

Egg sells to customers of Conn. Valley Egg.

(c) On August 31, 1978 Conn. Valley Egg agreed to sell all of its customers to Colchester Egg for a price equal to one-ninth (1/9th) of all of the commissions paid at the rate of 1-1/2¢ per dozen eggs that Colchester Egg shall have paid to Conn. Valley Egg from September 1, 1978 to Augsut 31, 1987.

B.

KOFKOFF EGG FARMS LIMITED PARTNERSHIP

JOINT VENTURE WITH RYTMANS' COLCHESTER EGG

RE: CONNECTICUT VALLEY EGG CONTRACT

Although the Conn. Valley Egg Contract was in the name of Colchester Egg, the Kofkoff Egg Farms Limited had entered into a joint venture with Rytmans' Colchester Egg to acquire the Conn. Valley customers through the Conn. Valley Egg Contract.

The terms of this joint venture were as follows:

(a) Kofkoff Egg Farms Limited shall provide one-half of the eggs needed to service Conn. Valley Egg customers and Colchester Egg

shall provide one-half of the eggs needed to service Conn. Valley Egg customers.

(b) Kofkoff Egg Farms Limited shall be paid what the Conn. Valley Egg customers paid for the eggs less the operating cost of the egg distribution provided by Colchester Egg plus one cent.

(c) Kofkoff Egg Farms Limited shall contribute $250,000 to Colchester Egg to assist in financing the receivable to acquire the vehicles.

NORWICH COMMUNITY DEVELOPMENT CORPORATION

The Norwich Community Development Corporation (herein after "NCDC") is a corporation that owns an Industrial Park next to properties owend by the plaintiffs enterprises namely The Hilltop Farm and The Riley Farm.

The NCDC was in the process of trying to build a road directly next to The Hilltop Farm and Riley Farm in 1986 and 1987.

FACTS CONCERNING THIS MATTER

THE CNB PLAN OF LIQUIDATION OF PLAINTIFF AND ITS IMPROPER EXERCISE OF DOMINION AND CONTROL OVER THE PLAINTIFFS ENTERPRISE IMPROPERLY BENEFITTING ITSELF AND ITS INSIDER SAMUEL KOFKOFF AND THE KOFKOFF DEFENDANTS

52. Prior to October of 1984, CNB had loaned the enterprise monies for the operation of the enterprise. Commencing in late 1984, CNB began a plan of liquidation of the plaintiffs' enterprises, assets and businesses. Said plan was devised after employees of CNB met with defendant Samuel Kofkoff. Samuel Kofkoff and his business entities were borrowers of CNB and partners with the plaintiffs, Colchester Egg Farms, Inc. in a joint venture which supplied eggs to customers of a company called Connecticut Valley Egg Company, Inc. (Kofkoff was a partner through his entity Kofkoff Egg Farm Limited Partnership). Additionally at this time, Samuel Kofkoff was an "insider" of CNB through his position and membership on defendant CNB Advisory Board and his position to adversely influence CNB's handling of

the plaintiffs' relationship with CNB.

53. Samuel Kofkoff's discussion with employees of CNB took place immediately after Samuel Kofkoff demanded to be repaid his investment in the joint venture involving Connecticut Valley Egg customers and refused to pay his share of the joint venture's costs.

54. Samuel Kofkoff's discussion with employees of CNB related to the creditworthiness of the plaintiffs. As a result of this conversation, CNB, through an employee, informed the plaintiffs that something was not right with their accounts with CNB. After the Kofkoff meeting with CNB, CNB demanded an audit of the plaintiffs' accounts at the plaintiffs' expense. At the time of this investigation, CNB had not declared the plaintiffs to be in default of their obligations.

55. Meanwhile, the actions of Kofkoff Egg Farm Limited Partnership caused cash flow problems for the plaintiff, Colchester Egg Farm, Inc.

56. Although no problems was found as a result

of the investigation, CNB, in early 1985, began controlling the daily management decisions of the plaintiffs businesses. CNB would make decisions as to which of the plaintiffs' bills would be paid and CNB made sure bills owed to Kofkoff Egg Farm Limited Partnership were paid, thereby protecting another CNB borrower and insider and preferred of CNB. Such control and management was so intruding upon the daily operation of the enterprise that CNB developed and owend a fiduciary duty to the enterprise to act in its best interest. Such control and management went beyond normal banking practices in that banks normally do not take over daily operations. CNB also from 1985 forward took funds directly from the plaintiffs' enterprises to pay interest, principal and other fees.

57. In 1984 and 1985, the defendants, CNB, decided to liquidate the entire debt of the plaintiffs. Instead of telling the plaintiffs CNB kept its plan a secret. CNB devised a scheme wehrein it decided to control and acquire properties of the

plaintiffs' enterprise through becoming involved in day-to-day management of operations of the plaintiffs'. CNB wrongfully used its position as the plaintiffs enterprises' lender to compel the plaintiffs to engage in transactions that the plaintiffs would not have engaged in. This conduct as will be further explained herein went beyond normal and acceptable banking procedure.

58. CNB engaged in a speculated plan of liquidation of the plaintiffs' enterprise as is evidenced by an internal memorandums of CNB dated February 14, 1985 and August 29, 1985. During this period of time that CNB was engaged in its secret speculated plan of liquidation CNB had the plaintiffs engage in mortgages and secured transactions that CNB used to deceptively improve its secured position. CNB improved its secured position by obtaining additional collateral without informing the plaintiffs of its liquidation plan. A prime example of this was the March 1985 Mortgage Modification Agreement wherein CNB was able to increase its

mortgages from $1 million to $2.5 million. The plaintiffs agreed to this Mortgage Modification and other arrangements and requirements imposed by CNB because the plaintffs were unaware that CNB was in the process of liquidating their entire debt. The plaintiffs were informed that CNB was going to continue on as their lender and that they were going to continue to operation.

59. CNB also sought to eliminate Julius Rytman as the manager of the enterprise without advising him of that plan. CNB decided that it was in CNB's best interest that Julius Rytman be replaced.

60. CNB also imposed the management decision on the plaintiffs to require Colchester Egg Farms, Inc. to make overpayments to Julius Rytman who, in turn, was required to pay CNB for a debt owed by the plaintiff, Rytman Grain, Inc. to CNB. Said payments from Colchester Egg Farms, Inc. created a severe drain on Colchester Egg Farms, Inc. cash, thereby interferring with its abilty to function and resulting in further cash flow problems. The

plaintiffs made such payments under a constant threat of foreclosure made by CNB with the understanding that if the plaintiffs followed the management decision for Colchester Egg Farms, Inc. then CNB would not foreclose. The plaintiffs complied with CNB's demand now knowing that CNB was working towards a complete liquidation of the enterprise.

61. CNB's exercise of control over the plaintiffs was broadened to include the control over the management of Rytman Grain, Inc., a grain mill business, vital to the operation of the plaintiffs' enterprise's integrated business. CNB controlled the mill operations by deciding when and how much inventory could be bought, CNB controlling purchases making advancements when CNB felt, in its own management decision, that advancement should be made for certain specific purchases. The control exercised by CNB over said purchase had the effect of running the mill operation and, thereby, affecting the plaintiffs' enterprise.

62. The control and management over the mill was

also extended by CNB's demand that the Rytman Grain, Inc. stop supplying dairy farmers with grain. The dairy farmer accounts provided the mill with needed income to cover operating expenses. CNB threatened foreclosure if the sales to dairy farmers did not cease thereby using their contractual rights for improper control and management over the grain mill part of the plaintiffs' enterprise.

63. CNB, at this time, made the management decision for Rytman Grain, Inc. decision to remove Julius Rytman as manager of his own grain mills. In an internal memo dated February 14, 1985, CNB employee stated: "Try to work out deal where Julius [Rytman] is replaced at mill ...". Additionally in February 1985, CNB prevented the plaintiffs from paying their first mortgage holder (Federal Land Bank of Springfield) on their real estate (CNB was in the second position) by failing to pay a check made out to the first mortgage holder (CNB paid all other checks of plaintiffs) and by telling the plaintiffs that CNB would not honor any other checks made

payable to the first mortgage holder. The effect of this control and management decisions over the plaintiffs was to prevent them from satisfying their obligations to the first mortgage holder thereby making the first mortgage holder act vigorously to enforce its rights against all the plaintiffs' enterprise's properties where the first mortgage holder had a mortgage. One of these properties was the enterprises' grain mill. This action included the eminent institution of foreclosure proceeding by Federal Land Bank which placed added economic pressure on the plaintiffs at this time.

64. Given the pressures created by CNB's control and management some of which are mentioned above and Kofkoff's pulling his $250,000 out of the joint venture, CNB had forced the plaintiffs into a position where they could force the plaintiffs to sell the mill in August of 1985 effectively carrying out their management decision to oust Julius Rytman as the manager of the mill and continue the secret plan of liquidation as evidenced by CNB's internal

memoranda. CNB told the plaintiffs that if they sold the mill CNB would continue its lender-borrower relationship and that the plaintiffs enterprise would be allowed to continue to operate.

SALE OF THE PLAINTIFFS ENTERPRISES' GRAIN MILL TO HIGH TECH FEEDS, INC. IN AUGUST, 1985

65. On August 8, 1985 the Plaintiffs' enterprise sold their grain mill to High Tech Feeds, Inc.

66. Prior to the sale of the Rytman Grain Mill, NSS and CNB agreed to participate on a loan sought by High Tech Feeds, Inc, the purchaser of the Grain Mill, to acquire the Plaintiffs' Enterprise Grain Mill.

67. High Tech Fees, Inc. was owned by two shareholders, Aaron Spandorf and Milton Safenowitz.

68. The sale that was consummated on August 8, 1985 involved High Tech Feeds, Inc. borrowing $2.1 million from CNB and $1.05 million from the Plaintiff, Dora Rytman.

69. On August 8, 1985, NSS entered into a Participation Agreement with CNB relative to a $2.1

million loan involving the acquisition of the property of the Plaintiffs' enterprise known as the Rytman Grain Mill and the land associated therewith. (hereinafter "Participation Agreement").

70. The $2.1 million loan from CNB (participated in by NSS) was evidenced by a Promissory Note and secured by a Mortgage on the Grain Mill property.

71. This mortgage is hereinafter referred to as the "High Tech/CNB Mortgage". The $2.1 million loan was evidenced by a note from High Tech Feeds, Inc. to CNB (this note is hereinafter referred to as the "High Tech/CNB Note").

72. The $1.05 million loan from the plaintiff, Dora Rytman, was secured by a mortgage and security interest on the Mortgaged Property on the Grain Mill (hereinafter referred to as the "High Tech/Rytman

Bank of Springfield (hereinafter "Land Bank") on August 8, 1985. At the time of the assignment, NSS, CNB and Land Bank entered into an Intercreditor Agreement.

74. NSS reserved certain rights through that Participation Agreement. In particular CNB had to obtain NSS consent "to modify any of the terms of the Financing Agreements relating to the Loan and the Collateral." Financing Agreements are defined in said Participation Agreement as "agreements providing for a loan of $2,100,000.00 (hereinafter referred to as the "Loan") to be made by Lender to Customer, which Loan will be specifically secured by a certain grain mill."

75. Therefore, through the Participation Mortgage") and a note from High Tech Feeds, Inc. to Dora Rytman (hereinafter referred to as the "High Tech/Rytman Note").

73. The High Tech/Rytman Note and the High Tech/Rytman Mortgage were assigned to Federal Land Agreement, NSS retained the right to control any

modification to the Financing Agreements.

76. Additionally, through the Intercreditor Agreement, NSS retained the right to participate in decisions relative to action taken in connection with the loan.

77. The Intercreditor Agreement specifically gave NSS the right to participate with the other two parties to the Intercreditor Agreement in decision on instituting "action taken in connection with the High Tech Connecticut National Note or the High Tech/Rytman Note or the mortgages granted in connection therewith."

78. The Intercreditor Agreement also provided:

2) Notwithstanding anything contained in the provisions of applicable law relative to the priority of mortgages and other filings, CONNECTICUT NATIONAL and LAND BANK agree to share their respective first mortgage interests in the Mortgaged Property, pari passu, based upon the respective balances due to each of them under the High

Tech/Connecticut National Note and the High Tech/Rytman Note. The net proceeds of any foreclosure of either of the mortgages shall be shared, pari passu, as set forth above. It is the intention of the parties that each receive the regular payments to which it is entitled under the respective notes and that no party shall receive more than its proportionate share of aggregate payments made by HIGH TECH on the High Tech/Rytman Note and the High Tech/Connecticut National Note.

CNB BENEFITS FROM THE SALE AND CONTINUES WITH ITS SECRET PLAN TO LIQUIDATE THE PLAINTIFFS

79. The forced sale of the grain mill was a tremendous benefit to CNB although it was a severe blow to the plaintiffs enterprise because it took away its grain supply for their chickens. CNB's position relative to the plaintiffs loan "improved substantially" according to its internal memos. "In addition to an approximate $562 [thousand] paydown on the Rytman grain revolver, [CNB] position relative to

all Rytman real estate improved by $2.9 [million]". Despite this fact, CNB decided upon "extracting all available cash for purposes of paying down the existing Rytman indebtedness" through its control of the plaintiffs' enterprise accounts and decided to continue to look for buyers to liquidate the rest of the plaintiffs' enterprise's assets, namely -- chicken farms and egg distribution business and real estate owned by the plaintiffs' enterprises. These facts were concealed from the plaintiffs which continued with their banking relationship with CNB believing that they would allow to continue to operate.

80. After the mill was sold, CNB told the plaintiffs, Julius Rytman and Dora Rytman to stop raising replacement chickens. CNB informed the plaintiffs if they did not follow CNB management decision to stop raising replacement chickens, CNB would foreclose. This was one major (and potentially fatal) management decision forced upon the plaintiffs. (This management decision would have

effectively destroyed the ability of the plaintiffs to continue their enterprise because there would be no young chickens to replace old chickens that had to be replaced. Without young chickens to replace the old chickens, the size of the egg producing flock would decrease and the plaintiffs would have no eggs to sell to their egg distribution company, Colchester Egg Farms, Inc.) The plaintiffs did raise replacement chickens despite CNB management order not to. In April of 1986, CNB found out and further imposed their will by ordering that the plaintiff sell all of their chickens (young and old) located on their farm known as the Cole Farm in West Hampton, Massachusetts or CNB would foreclose. In fact, CNB went as far as finding a buyer for the Cole Farm chickens at a ridiculously low price and told the plaintiffs to sell them for that, even though it was not in the plaintiffs' enterprise's best business interest.

81. CNB continued to take funds from the various plaintiffs' enterprise's accounts. It also required

that Colchester Egg Farms, Inc. over pay Julius Rytman and Dora Rytman for its eggs creating a huge overdraft problem for Colchester Egg Farms, Inc. CNB then took the extra money in the Julius Rytman and Dora Rytman account and applied to a loan due from the plaintiff, Rytman Grain, Inc.

82. The overpayment by CNB was so great that by April 1986 the overdraft was over $400,000. This forced overdrafts effectively kept Colchester Egg Farms, Inc. without cash and at CNB's mercy for all its operations. The plaintiffs could not make any major and most minor management decisions without CNB's consent. This control was far beyond any rights contained in the financial contracts between CNB and the plaintiffs and was maintained under a constant threat of foreclosure

SALE OF COLCHESTER EGG FARMS, INC. ASSETS TO COLCHESTER FOODS, INC. ON MAY 13, 1986 WHICH STRENGHTENED CNB'S INSIDER KOFKOFF

83. In early 1986, CNB further exercised its improper dominion and control over the plaintiffs by

telling the plaintiffs that they must sell their egg distribution business, thereby CNB made another major management decision for the plaintiffs. CNB told the plaintiffs that if they did not sell Colchester Egg Farms, Inc. assets CNB would foreclose. CNB then proceeded to make the management decision of who the plaintiffs sold Colchester Egg, Inc.'s assets to by refusing to allow the plaintiffs to sell those assets to any of the potential purchasers except to the Kofkoff defendants (their Advisory Board member, insider/preferred customer and borrower). Specifically CNB told the plaintiffs that it would not allow Colchester Egg, Inc.'s assets to be sold to another purchaser, Jack DeCosta, a very large egg producer in Maine (and major competitor of the Kofkoff defendants) and that Colchester Egg, Inc.'s assets had to be sold to the Kofkoff defendants. CNB made this management decision despite the fact that the DeCosta deal would have generated more money immediately to the plaintiffs.

84. Just prior to the sale of plaintiffs

Colchester Egg Farms, Inc. to Kofkoff's Colchester Foods, Inc. CNB charged against the revolving line of credit of Colchester Egg Farms, Inc. the $400,000. of overdrafts it had created. This was done without Colchester Egg Farms, Inc.'s consent. As noted in the general facts Colchester Egg Farms, Inc. had stockholders other than Julius Rytman and Dora Rytman namely, John Fedorwitz and Milton L. Jacobson Trustee for the Rytman children.

85. Because CNB imposed this management decision on the plaintiffs, the plaintiffs sold to Samuel Kofkoff, Robert Kofkoff and Joseph Fortin, through a new entity called Colchester Foods, Inc., and Pierce Hollow Farms, Inc., and Kofkoff-Fortin Management Associates.

86. On May 3, 1986, the plaintiff, Coclhester Egg Farms, Inc. sold most of its assets to the aforesaid Kofkoff defendants.

A description of some of the contractual arrangements entered into at that time are set forth in the next paragraphs.

EGG SUPPLY (OR PURCHASE) AGREEMENT

87. Colchester Foods, Inc. entered into an Egg Supply (or Purchase) Agreement with Julius Rytman and Dora Rytman.

(a) Rytman will house approximately one million (1,000,000) laying hens for 10 years.

(b) Rytman shall sell all eggs to Colchester Foods, Inc. for 10 years.

(c) Rytman shall be paid weekly for the sale of said eggs.

(d) Rytman shall be paid the price that Colchester Foods, Inc. receives for Rytmans' eggs from Colchester Foods, Inc. customers and Connecticut Valley Egg customers less Colchester Foods, Inc. costs for distribution and delivery plus one cent (.01) per dozen.

EGG COMMISSION CONTRACT ON CONNECTICUT VALLEY EGG CUSTOMERS

87. Assignment of Conn. Valley Egg Contract and an agreement that Colchester Foods pay commissions to

Colchester Egg on the sale of eggs to Conn. Valley Egg customers (hereinafter "Egg Commission Contract Conn. Valley"). Pursuant to the Egg Commission Contract Conn. Valley, Colchester Foods agreed to pay Colchester Egg one-half (1/2¢) cent for each dozen eggs Colchester Foods sells to Conn. Valley Egg customers.

EGG COMMISSION CONTRACT ON COLCHESTER EGG CUSTOMERS

88. Agreement by Colchester Foods to pay Colchester Egg a commission of one cent (.01) on each dozen of eggs sold by Colchester Foods to Colchester Egg customers for a period of 8 years from May 3, 1986 to May 3, 1994, hereinafter the "Egg Commission Contract Colchester Egg".

LEASE ON THE COLCHESTER EGG BUILDING BY DORA RYTMAN TO COLCHESTER FOODS

89. On May 3, 1986 Dora Rytman leased her land and building wherein Rytmans' Colchester Egg operated its egg distribution business to Colchester Foods. The lease provided for a five year term with rent at $84,000 per year ($7,000 per month) and an option to

purchase the building and 8.5 acres for one million dollars.

$500,000 LINE OF CREDIT

90. As part of the consideration that Rytmans' Colchester Egg was to receive from the Kofkoffs to sell certain assets of Colchester Egg to Kofkoff entities, Colchester Foods agreed to provide a line of credit to Julius Rytman and Dora Rytman of $500,000. Said line of credit was to be advanced monthly of up to $100,000 per month as requested by Julius Rytman and Dora Rytman.

91. Julius Rytman and Dora Rytman signed a promissory note for said $500,000 line of credit and gave mortgages and security interest in the following real estate of their enterprise:

(i) Colchester Egg distribution building and the chickens located therein;

(ii) Hilltop Farm and the chickens located therein;

(iii) Jalkenan Farm and the chickens located therein;

(iv) Schwartz Farm and the chickens located therein;

(v) Robella Farm and the chickens located therein.

92. The Kofkoff defendants were aware that the plaintiffs needed the income from the Egg Supply Agreement to pay their corporation Colchester Foods, Inc., CNB and to operate plaintiffs chicken farms (including feeding their chickens).

93. CNB wrongfully imposed management decision (which was imposed by CNB control over the enterpirses assets), on the sale of the assets of Colchester Egg Farms, Inc. to the defendant Kofkoffs' related entities not only resulted in a benefit to CNB because of payments to CNB on the plaintiffs debt but also strengthened CNB's Advisory Board member, insider and preferred borrower, the Kofkoffs defendants and enabled the Kofkoff defendants to acquire and control most of the plaintiffs' enterprises assets.

KOFKOFF'S COLCHESTER FOODS, INC. IMMEDIATELY STARTS

TO CHEAT THE RYTMANS AND FAILS TO ADVANCE IN ACCORDANCE WITH ITS LINE OF CREDIT.

94. Almost immediately after the sale, the plaintiffs questioned the accuracy of payments made to them by Colchester Foods on the contracts described above. The plaintiffs complained to their attorney, Milton L. Jacobson, that they were being cheated by Colchester Foods, Inc. and Julius Rytman and Dora Rytman asked Milton L. Jacobson to take action. Instead of taking action, Milton L. Jacobson told Julius Rytman and Dora Rytman that they had to keep quiet because Samuel Kofkoff was on the Board of CNB and that Samuel Kofkoff had buried them once with CNB (referring to the October 1984 incident and the events that followed described supra) and Samuel Kofkoff would bury the plaintiffs again.

95. Additionally, Colchester Foods, Inc. also refused to lend the plaintiffs the last $75,000.00 on the $500,000.00 line of credit. Julius Rytman and Dora Rytman complained to Milton L. Jacobson about Colchester Foods, Inc.'s refusal to honor its line of

credit agreement. Attorney Milton L. Jacobson did nothing about this complaint, telling Julius Rytman and Dora Rytman again to keep quiet because Samuel Kofkoff was on CNB's Board and that Samuel Kofkoff had buried them once with CNB and Samuel Kofkoff would bury the plaintiffs again.

96. On November 6, 1986, Blair Hagy, an employee of Colchester Foods, Inc. sent, via the mail, to the plaintiffs, a fraudulent accounting with respect to the monies paid pursuant to the Egg Supply Agreement. Said letter fraudulently represented that the plaintiffs Julius Rytman and Dora Rytman owed Colchester Foods monies under the agreement by listing false, fraudulently made up costs. Mr. Hagy's letter stated that Julius Rytman and Dora Rytman owed Colchester Foods, Inc. approximately $172,000. In fact, the Kofkoff defendants actually owed them money under the Egg Supply Agreement and the other contracts of over $600,000 for the period running form May 3, 1986 to February 20, 1987. No additional money was due Colchester Foods, Inc. at

the time the letter was sent. This fraudulent letter set the Kofkoff Defendants' scheme to acquire the enterprise assets in motion.

THE FRAUD PERPETRATED ON THE PLAINTIFFS BY CNB IN NOVEMBER, DECEMBER, 1986, JANAURY AND FEBRUARY 1987 RELATIVE TO PLAINTIFFS' ACQUISITION OF HIGH TECH FEEDS, INC. INVOLVING $600,000 OF CHARGES.

97. In 1986 High Tech Feeds, Inc., defaulted on its financial obligations and in particular the High Tech/CNB Note and the High Tech/Rytman Note.

98. On November 3, 1986 High Tech Feed, Inc. sought protection from the United States Bankruptcy Court under Chapter 11 of the Bankruptcy Code. Unknown to the plaintiffs at the time, High Tech Feed, Inc.'s checking account was overdrawn as of the date of its bankruptcy filing. On the next day, CNB took the overdraft that was unsecured and charged it to the High Tech Feed revolving line of credit. Prior to the charging of the overdraft to the High Tech Feed's revolving line of credit, the line of credit was at or under its limit of $775,000. After

CNB charged the overdrafts to the revolving line of credit, the amount due on the line of credit went above its limit of $775,000. (This line of credit was not fully secured-namely, the value of the collateral was not enough to cover it at the time.) As will be discussed later in this complaint, CNB fraudulently misappropriated from the closing wherein Julius Rytman and Dora Rytman acquired High Tech Feed, Inc. $93,721.50+ to cover the overdrafts improperly added above the $775,000 line of credit.

99. Right after High Tech Feed, Inc. went into Chapter 11, Julius Rytman and Dora Rytman sought to acquire High Tech Feed, Inc. Julius Rytman and Dora Rytman asked CNB what the debt of High Tech Feed, Inc. was with CNB. CNB represented that the debt was as follows:

(a) A mortgage to CNB on the High Tech Feed Mill of approximately $2,000,000. This was the High Tech Feed loan in which Norwich Savings Society participated;

(b) A revolving line of credit secured by High

Tech Feed, Inc. inventory and accounts receivables with a balance of $775,000;

(c) Truck and equipment loan with a balance of $360,000;

(d) Mortgage of approximately $1 million to Dora Rytman assigned to Federal Land Bank of Springfield.

100. Julius Rytman and Dora Rytman concluded that they wanted to buy High Tech Feed, Inc. because they would save approximately $20 per ton on grain for their proprietorship chickens for a total savings in 1,000 tons per week of $20,000. (Additionally, Julius Rytman and Dora Rytman planned to sell grain to outside customers for additional income).

101. Julius Rytman and Dora Rytman told CNB that they wanted to buy High Tech Feed, Inc.

102. CNB told Julius Rytman and Dora Rytman that they could buy High Tech Feed, Inc. only if Julius Rytman and Dora Rytman agreed (to which the Rytmans agreed for plaintiffs) to the following:

(a) Julius Rytman and Dora Rytman had to pay a

disputed $500,000 receivable that they did not owe to High Tech Feed, Inc. This $500,000 was paid by $100,000 in cash from Julius Rytman and Dora Rytman and $400,000 from monies borrowed from CNB.

(b) $100,000 in cash paid by Julius Rytman and Dora Rytman to CNB to be used to purchase the High Tech Feed, Inc. inventory. These funds were to be used to reduce the High Tech Feed, Inc. revolving line of credit which was secured by High Tech Feeds, Inc.'s inventory and receivables. CNB represented that the funds paid by subparagraph a) and b) were to be applied to reduce the High Tech Feeds, Inc. revolving line of credit. Based upon this representation of CNB that Julius Rytman and Dora Rytman paid the funds listed in subparagraph a) and b) and Julius Rtyman and Dora Rytman did the other items listed in this pargarph because they intended to use the inventory and

receivables to operate to enterprise.

(c) Julius Rytman and Dora Rytman had to give up their claim against High Tech Feed, Inc. over the disputed receivable.

(d) Julius Rytman and Dora Rytman had to ask a daughter to transfer property known as the Dydo Farm/Lisbon Estates to them and then Julius Rytman and Dora Rytman had to give CNB a mortgage in it to secure their guarantee of the High Tech Feeds loans and to give further security for the plaintiffs debt to CNB.

(e) Julius Rytman and Dora Rytman had to cross collateralize the High Tech Feed, Inc. debt to CNB by all of their properties previously mortgaged to CNB and to give a mortgage re their properties known as the Putnam Industrial land and the Putnam Residential land for the debt owed to CNB and the High Tech Feed, Inc. debt.

(f) By CNB's own records it obtained $2-3M of

equity in properties of Julius Rytman and Dora Rytman as a result of these mortgages, modifications, and cross collateralizations.

103. CNB fraudulently represented to Julius Rytman and Dora Rytman that if they agreed to CNB's demands, then CNB would do the following:

(a) CNB represented that they would refrain from taking money out of the checking accounts of the plaintiffs' enterprises while High Tech Feed, Inc. was in Chapter 11. This was crucial to the plaintiffs' enterprise because Julius Rytman and Dora Rytman were to use the funds not taken by CNB for cash flow to operate High Tech Feed, Inc. and the other businesses of the enterprise and Julius Rytman and Dora Rytman told CNB this.

(b) CNB represented that the balance due in the High Tech Feed, Inc. revolving loan was $775,000 and that CNB would apply the proceeds obtained at closing to this revolving line of credit - namely, proceeds

that were to be applied were $500,000 which CNB required Julius Rytman and Dora Rytman to pay to High Tech Feed, Inc. for the disputed receivable; the $100,000 paid by Julius Rytman and Dora Rytman for the High Tech Feed, Inc. inventory (once Bankruptcy Court approval was obtained).

(c) CNB agreed that High Tech Feed, Inc. could pay the loan on the vehicles loan at the rate of $5,000+ per month.

(d) CNB agreed that the Debtor In Possession collection account of High Tech Feed, Inc. which was approximately $200,000 would be applied to liquidate the balance due on the revolving line of credit which at that point would be approximately $175,000. The figure $175,000 was arrived as follows:

$775,000 amount of revolving line of credit

$500,000 paid by Rytman re disputed receivable

$100,000 paid by Rytman for inventory

$175,000 Balance due on the revolving line of credit

(e) CNB told Julius Rytman and Dora Rytman that Aaron Spandorf would pay his feed bill to High Tech Feed, Inc. of $115,000. These funds were available to High Tech Feed, Inc. as operating capital once the revolving line of credit was paid in full.

(f) CNB told Julius Rytman and Dora Rytman that there was an additional $180,000 of receivables that were due from third parties to High Tech Feed, Inc. that was available to High Tech Feed, Inc. as operating capital once the revolving line of credit was piad in full.

(g) Additionally, CNB represented that it would restructure all of the plaintiffs' obligations to CNB once High Tech Feed, Inc. came out of bankruptcy.

104. Julius Rytman and Dora Rytman relied upon the representations of CNB when they agreed to CNB's

conditions of the purchase of High Tech Feed, Inc.

105. The High Tech Feed, Inc. closing took place on December 8, 1986. Eleven days later, CNB recorded the transaction in its records.

106. That CNB fraudulently took from Julius Rytman and Dora Rytman funds and funds to be available to them:

(a) $93,721.50 to the High Tech Feed, Inc. revolving line of credit (above the $775,000 represented to the Rytmans on December 8, 1986).

(b) $20,630 of unpaid interest. (This had never been discussed.)

107. Contrary to CNB's representation to Julius Rytman and Dora Rytman CNB never stopped taking funds out of the plaintiffs' checking accounts. From December 8, 1986 through February 20, 1987 CNB took a total of approximately $69,000 in violation of their express representation to the plaintiffs that they would not take any funds until High Tech Feeds came out of bankruptcy.

108. After Julius Rytman and Dora Rytman purchased High Tech Feed, Inc., they discovered that CNB fraudulently charged their enterprises' proprietorship account for High Tech Feed, Inc's. inventory purchases and attorneys' fee in November 1986 totalling approximately $96,413.46. Julius Rytman and Dora Rytman did not find out about these charges until they received their bank statement after the High Tech Feed acquisition closing. These misappropriations wrongfully reduced the plaintiffs' cash available to operate in December 1986, January and February 1987.

109. After purchasing the High Tech Feeds, inc., Julius Rytman and Dora Rytman discovered that a $25,000.00 payment made in November, 1986 in a CNB debt owed by the plaintiffs was fraudulently obtained (CNB obtained the payment from the plaintiffs in the representation that it would be applied to a note owed by the plaintiffs) was applied to a High Tech Feeds, Inc. debt in November 1986. CNB fraudulently obtained a check for $25,000 from Julius Rytman. CNB

told Julius Rytman that the check was for the payment of a note owed by the plaintiffs to CNB.

110. After purchasing the High Tech Feeds, Inc. the plaintiffs discovered that in late November 1986 when it was apparent that Julius Rytman and Dora Rytman would be acquiring High Tech Feed, Inc., CNB without authority charged the plaintiffs' enterprises' account Rytman Grain, Inc. $161,000 for fraudulent overdraft charges from 1982 for all of the plaintiffs. These fraudulent charges reduced the plaintiffs' credit and increased its debt obligations.

111. Therefore in November 1986, due to the above transactions above, CNB wrongfully charged the accounts of the plaintiffs in the approximate amount of $282,000.

112. Finally, approximately one week prior to Kofkoff's Colchester Foods, Inc. taking the Rytmans' million plus chickens, (on February 20, 1987) CNB took the $100,000 that CNB represented to the Rytmans that would be applied to the High Tech Food, Inc. revolving line of credit and misappropriated it from

the payment on the High Tech Feed's revolving line of credit and applied it against the vehicle and equipment loan.

113. Therefore, from November, 1986 to February 20, 1987, CNB wrongfully and improperly charged the accounts of or took from the accounts of the plaintiffs enterprises approximately $565,764.96 and improperly required that Julius Rytman and Dora Rytman to pay $500,000. to High Tech Feed's as a receivable that they did not owe for a total of $1,065.764.96. There were additional charges (attorney's fees) that Julius Rytman and Dora Rytman were not told about prior to the closings..

114. Despite this fraudulent misappropriation of $100,000.00 the High Tech Feed, Inc. revolvor was paid in full by February 28, 1987. Despite this payment, CNB never released the collateral securing the same and has as late as 1990 filed renewal statements with the Secretary of State's office to preserve its fraudulent claim that it still has security in the inventory and receivable when the

underlying debt has been paid in full and CNB has wrongfully taken proceeds from High Tech Feeds, Inc's. receivables and inventory to reduce obligations to it when the funds should be available to the general creditors of High Tech Feeds, Inc.

115. The fraudulent conduct of CNB seriously weakened the plaintiffs financially.

NSS REFUSES TO CONSENT TO JULIUS RYTMAN AND DORA RYTMAN'S PURCHASE OF HIGH TECH FEEDS, INC.

116. NSS claimed that CNB violated the Participation Agreement by allowing for the sale of the High Tech Feeds stock to the Rytmans. NSS informed CNB of this fact by a letter dated December 15, 1986 from NSS's attorney, Mark Block, to CNB's attorney, Lee Spielman.

117. The Block December 15, 1986 Letter memorializes a meeting between NSS and CNB relative to the transfer of the shares on December 11, 1986. In the letter NSS indicates the following:

NSS requests:

1. An accounting of all payments made on the

High Tech/CNB loan (the participating loan), including the allocation of each payment.

2. "Norwich Savings considers the Rytman puchase [sic] of High Tech Feed shares to be an event which required the prior consent of Norwich Savings Society ...." NSS required complete documentation relating to the High Tech/CNB Loan including guarantees, notes, mortgages and a listing of all collateral supplied by Mr. Rytman to support any guaranty which Rytman gave to Connecticut National.

3. CNB represented to NSS that when Julius Rytman repays the Land Bank in full that the High Tech-Rytman Note which CNB held as collateral would be subordinate to the High Tech/CNB Participating Loan.

4. NSS requested that the first mortgage that secures the High Tech/Rytman Note be brought current within 30 days. In addition, NSS indicated

"In spite of Connecticut National Bank's

position that it has fully protected Norwich Savings Society by obtaining additional collateral to support the substitution of a new guarantor, Norwich Savings Society considers that when Connecticut National has collected over $500,000.00 in receivables [This reference is to the $500,000.00 disputed receivable that Julius Rytman and Dora Rytman had to pay as a condition of the purchase imposed by CNB, see section Rytman Acquisition of High Tech Feeds, Inc.] and controls the allocation of the payments made, Connecticut National has a responsibility to apply at least a portion of those funds to payment of the first mortgage. Norwich Savings Society is fully aware of the Chapter 11 related problems, but believes that Connecticut National Bank should take

whatever steps are necessary so that said payments can be made.

118. NSS's discontent is further evidenced by the fact tht they, in February or March of 1987, sought legal advice concerning CNB's allocation of High Tech Feed receivables.

119. The issue of NSS refusal to consent continues on in early 1987. In the February 5, 1987 CNB's letter via mail from Attorney Krasna to the Defendant Gordon, of Brown, Jacobson, Jewett and Laudone, P.C., Mr. Krasna asks if the defendant Gordon obtained the consent of NSS. These letters were not disclosed to the plaintiffs.

120. At the time the plaintiffs purchased the stock of High Tech Feeds, NSS was a participant in one of the High Tech Feeds' loan for one million dollars. According to the Participation Agreement, NSS was to consent to any modifications affecting collateral. CNB failed to notify NSS that the plaintiffs were

going to purchase the stock. Once NSS found out the plaintiffs were back in the mill, they voiced their dissatisfaction to CNB. NSS did not want the plaintiffs in the mill. Further, NSS was so upset that the plaintiffs were back in the mill, they sought legal advice from outside counsel as to their rights against CNB.

121. CNB and the plaintiffs enterprises had agreed that the sales from the Lisbon Estates properties, a part of the enterprises real estate business, would be used to pay the Rytman enterprises debt and obligations to CNB. Instead CNB entered into a concealed side deal with the NSS to pay money from those sales on an Aaron Spandorf debt owed to NSS. This was the plan CNB secretly had with NSS after NSS objected to Rytmans being back in the mill. CNB had to come up with some way to satisfy NSS, because NSS argued that CNB breached their participation agreement and had, in fact, sought outside legal counsel to review the matter. The

execution of this scheme or artifice was facilitated by the use of mail. In particular several letters were sent to Milton L. Jacobson from Connecticut National Bank and Norwich Savings Society through their attorneys, and to and from Attorney Glenn Gordon regarding these sales in November and December of 1986 outlining the sales and the division of the proceeds between the banks instead of against the plaintiffs' debt as agreed upon.

122. Further, CNB's representations were false as is evidenced by its immediate conduct of wrongfully appropriating from the plaintiffs' enterprise's accounts including High Tech Feeds, Inc. account. This wrongful act weakened the plaintiffs financially.

123. In December 1986, CNB was then fully secured for the obligations owed by Rytmans and High Tech Feeds, Inc. However, unbeknown to the Rytmans, the CNB plan of liquidation was not terminated at this time. There was more

pressure to end CNB's relationship from NSS which was dissatisfied with the plaintiffs owning the mill. CNB AND JULIUS RYTMAN AND DORA RYTMAN AGREED THAT FUNDS FROM THE DYDO FARM WOULD PAY CNB LOAN OF $400,000.00 MADE IN CONNECTION WITH THE PURCHASE OF HIGH TECH FEEDS, INC.

126. As indicated above on December 8, 1986, the Plaintiffs, Julius Rytman and Dora Rytman and the other plaintiffs guaranteed the High Tech/CNB Note and other indebtedness of High Tech Feeds entered into a Mortgage Modification Agreement with CNB providing additional collateral all of the High Tech Feeds debt to CNB. In fact Julius Rytman and Dora Rytman provided all existing real estate as collateral for the High Tech Feeds debt to CNB that had been mortgaged to CNB at that time and obtained title to additional collateral which Julius Rytman and Dora Rytman gave an additional collateral for the High Tech Feeds, Inc. debt and the outstanding debt that the Plaintiffs owed to CNB. This additional property consisted of the Putnam Industrial Land, the

Putnam Residential Land, and the Dydo Farm a/k/a Lisbon Estates (hereinafter "Dydo Farm").

127. NSS was the first mortgage holder on the Dydo Farm by virtue of a mortgage deed dated October 30, 1986. This mortgage secured a note to NSS in the amount of $175,000. The note and mortgage were given to NSS by the then owner of the Dydo Farm, Sharon Borenstein (Julius Rytman and Dora Rytman's daughter).

128. At the time of the purchase of the High Tech Feeds stock by Julius Rytman and Dora Rytman, CNB also loaned Julius Rytman and Dora Rytman $400,000 (hereinafter "Rytman/CNB $400,000 Note"). Said $400,000 was secured by the December 8, 1986 Mortgage Modification Agreement and was to be repaid in accordance with Schedule A:

Schedule A

$40,000 on or before 12/22/86

$60,000 on or before 2/2/87

All outstanding balanced on or before June 8, 1987.

129. It was also agreed at the time of the execution of the Rytman/CNB $400,000 Note that 25% of the sales proceeds from the sale of lots and property out of the Dydo Farm would be applied to the Rytman/CNB $400,000 Note until the NSS Note and Mortgage was paid in full, then the entire proceeds of sales of lots and property out of the Dydo Farm would go to CNB to pay the Rytman/CNB note.

NSS CHANGES THE PLAINTIFFS/CNB AGREEMENT RELATIVE TO THE ALLOCATION OF THE PROCEEDS FROM THE DYDO FARM

130. When NSS loaned money on the Dydo Farm, the NSS mortgage securing the loan specifically indicated that NSS would be paid as follows upon the sale of the lots.

> Should the Grantor sell the lots which make up the subdivided premises, the Grantee agrees, upon receipt of 75% of the sales price of the individual lots or Twelve Thousand Five Hundred ($12,500) Dollars, whichever is greater, ***

The Rytmans agreed with CNB that the remaining 25% would go to them to pay the Rytman/CNB $400,000

Note on December 8, 1986 as indicated above.

131. On or after the December 11, 1986 meeting between NSS and CNB (wherein these secret deals were agreed upon), CNB entered into a fraudulently concealed (to the Plaintiffs) side deal with NSS to pay money from the sales on an Aaron Spandorf personal debt due to NSS. The execution of this scheme or artifice was facilitated by the use of mail. In particular, several letters were sent to Milton L. Jacobson from Connecticut National Bank and Norwich Savings Society through their attorneys, and to and from Attorney Glenn Gordon regarding these sales in November and December of 1986 outlining the agreed upon division of proceeds between the banks. The defendants and co-conspirators, Jacobson, Gordon and Brown Jacobson (principal of Brown Jacobson was a director of NSS at the time and Brown Jacobson was also representing NSS and CNB in other legal matters at this time) never informed the Plaintiffs about this side deal

132. Therefore, NSS and CNB agreed between

themselves to apply funds that were to go to the $400,000.00 loan to a debt owed to NSS by a third party without Julius Rytman's and Dora Rytman's consent.

133. Additionally when the NSS Note and Mortgage on the Dydo Farm was paid in full, the Plaintiffs were not allowed to sell any further lots or real estate out of the Dydo Farm nor sell any other property except through the October - November 1987 Agreement, disclosed herein, making it impossible for Julius Rytman and Dora Rytman to payoff the $400,000.00 loan as agreed.

ORR TRANSACTION

134. In January, 1987 Julius Rytman arranged to borrow $108,000 from James and Anna Orr. The plaintiffs agreed to pledge as collateral certain chickens located on the plaintiffs farm known as the Cole Farm (hereinafter "Cole Farm Chickens"). It was understood that Cole Farm chickens would be moved to the Orr Farm where the Orrs would care for them under a contractual relationship with the plaintiffs (the

Orrs had for years raised and cared for chickens owned by the plaintiffs through a contractual arrangement with the plaintiffs, Julius and Dora Rytman). This $108,000 loan secured by these chickens is hereinafter referred to as the Orr Transaction.

135. James and Anna Orr were represented by the defendant, Milton L. Jacobson of Brown, Jacobson and the plaintiffs, Julius Rytman and Dora Rytman, were represented by Milton L. Jacobson of Brown, Jacobson in the Orr Transaction.

COLCHESTER FOODS FRAUDULENTLY OBTAINS AN ADDITIONAL $116,000 NOTE AND ADDITIONAL SECURITY

136. Despite the fact that Rytman had complained constantly and vehemently to Milton L. Jacobson that Colchester Foods was cheating them starting in May, 1986, in December of 1986, Brown, Jacobson, Jewett and Laudone, P.C., Milton L. Jacobson and/or Glenn M. Gordon, represented Colchester Foods, Samuel Kofkoff, Robert Kofkoff, Joseph H. Fortin and Kofkoff Egg Farm Limited

Partnership and in early February, 1987 said lawyers and law firm started representing the Kofkoff defendants in matters directly related to the plaintiffs to the Rytmans detriment.

137. By February 7, 1987 the Kofkoff defendants had retained the defendant, Glenn Gordon and Brown, Jacobson, Jewett and Laudone, P.C. (hereinafter "Brown, Jacobson) as their attorneys to represent the Kofkoff defendants interests relative to matters relating to the plaintiffs.

138. On February 7, 1987 the Kofkoff defendant, Colchester Foods, through their law firm Brown, Jacobson was able to convince the plaintiffs, Julius Rytman and Dora Rytman to sign a promissory note for $116,000 and give security for the Kofkoff defendants fraudulent over charges under the Egg Supply Agreement which was fraudulently asserted by Blair Hagy in his November 1986 letter. The defendant, Milton L. Jacobson, who was representing both the Kofkoff defendants and the plaintiffs told the plaintiffs, Julius Rytman and Dora Rytman, to sign

said note and to give security for said $116,000. The defendant Jacobson advised Julius Rytman and Dora Rytman to sign the note, security agreement and UCC-1 financing statement at that time and that Julius Rytman and Dora Rytman could adjust the actual amount due later when an accurate accounting was done. Milton L. Jacobson said this because, at the time Rytmans' signed this note, they complained strongly that these monies were not owed. The defendant Jacobson prepared the note, security and UCC-1 financing statement for the plaintiffs, Julius Rytman and Dora Rytman and the Kofkoff defendant, Colchester Foods. The financing provided for security in chickens located on the farm location known as Kickhill Farm.

139. The Kofkoff defendants later claimed that although the written documents indicated that Colchester Foods was to obtain a security interest in the Kickhill Farm chickens, there was an "oral" understanding at the time fo the execution of the February 7, 1987 note, security agreement and UCC-1

financing statement that the plaintiffs, Julius Rytman and Dora Rytman, would give Colchester Foods security in the Cole Farm chickens (which as previously described were pledged to the Orrs).

140. The Kofkoff defendants were furious because they thought they had received a security interest in all of Julius Rytman's and Dora Rytman's chickens on May 3, 1986 and were furious that Rytmans had pledged certain chickens to the Orrs. The Kofkoff defendants made this fact known to Brown, Jacobson, Jewett and Laudone who then sought to assist the Kofkoff defendants in the following events.

COLCHESTER FOODS'S FRAUDULENT TAKEOVER OF PLAINTIFFS' CHICKENS WITH THE ASSISTANCE OF MILTON L. JACOBSON, GLENN GORDON AND BROWN, JACOBSON, JEWETT AND LAUDONE, P.C.

141. Colchester Foods, Inc. failed to pay Rytmans the full payment owed pursuant to the Egg Purchase Agreement and in February of 1987, Colchester Foods, Inc., Samuel Kofkoff, Robert Kofkoff, Joseph H. Fortin, and Kofkoff Egg Farm

Limited Partnership and/or Fitchville Realty, Inc., stopped paying Julius Rytman and/or Dora Rytman under the Egg Purchase Agreement even though the plaintiffs were living up to their side of the Agreements by supplying all of their eggs.

142. As a result of Samuel Kofkoff, Robert Kofkoff and/or Joseph H. Fortin's, and/or their corporations, failure to pay in accordance with their financial obligations as set forth in the Egg Supply Agreement, Egg Commission Contracts and the line of credits, the plaintiffs were weakened financially. This failure to pay the Rytmans and CNB's wrongful appropriation of funds from the plaintiffs account caused a severe blow to the Rytman businesses.

143. The most severe part of the blow to the plaintiffs was the Kofkoff defendants' Colchester Foods, Inc. wrongful failure to pay the weekly payment under the Egg Supply Agreement starting February 16, 1987. Colchester Foods, Inc. without warning and without a good faith or valid reason just stopped paying under the Egg Supply Agreement and

demanded that it be paid in full on its line of credit.

144. During approximately the week prior to February 20, 1987 while Samuel Kofkoff, Robert Kofkoff, Joseph Fortin, Colchester Foods, Inc. and Blair Hagy were executing the scheme to acquire approximately one million chickens that belonged to the Rytman enterprise, to acquire the profits that were generated by those chickens, to acquire and/or maintain control of the various farms where the Rytman enterprise chickens were located and to Samuel Kofkoff, Robert Kofkoff, Joseph Fortin, Blair Hagy, Colchester Foods, Inc., Pierce Hollow Farms, Inc. and their related business entities knew Julius Rytman and Dora Rytman could not keep operating without the Rytman enterprise's chickens. Robert Kofkoff called Samuel Kofkoff from Connecticut to Florida to discuss the developments regarding the scheme and how to carry it out during this week in violation of 18 U.S.C. 1343.

EXTORTION AND FRAUD USED BY THE KOFKOFF DEFENDANTS

AND BY DEFENDANTS MILTON L. JACOBSON, GLENN GORDON AND BROWN, JACOBSON, JEWETT AND LAUDONE, P.C. TO FORCE THE RYTMANS TO TRANSFER THEIR ONE MILLION CHICKENS ON FEBRUARY 20, 1987

145. On February 20, 1987 the Kofkoff defendants through Colchester Foods and the defendants Milton L. Jacobson, Glenn Gordon and Brown, Jacobson, Jewett and Laudone, P.C. forced Julius Rytman and Dora Rytman to transfer their one million plus chickens to Colchester Foods, Inc. Julius Rytman and Dora Rytman were forced to make this transfer because Colchester Foods, Inc. had wrongfully stopped paying them under the Egg Supply Agreement, which Julius Rytman and Dora Rytman's only source of income and the only egg distributor and buyer that Julius Rytman and Dora Rytman could sell their 300,000+ dozen eggs for that week and succeeding weeks on February 16, 1987. The Kofkoff defendants Samuel Kofkoff, Robert Kofkoff and Joseph Fortin and their attorneys Milton L. Jacobson, Glenn Gordon, Brown Jacobson, Jewett and Laudone, P.C. (who were also representing the Rytmans) on

February 20, 1987 told Julius Rytman and Dora Rytman that Colchester Foods, Inc. would not pay to the Rytmans any more money under the Egg Supply Agreement. Attorney Jacobson and Joseph Fortin told the Rytmans, on behalf of the Kofkoff defendants that Samuel Kofkoff had a court order to take over the chickens (this statement was untrue) and the Kofkoffs are not going to pay to the Rytmans any more money under the Egg Supply Agreement. Attorney Jacobson told the Rytmans in front of the Kofkoff defendants that the Rytmans have to face the reality that if the Kofkoff defendants did not pay the Rytmans any more money under the Egg Supply Agreement then the Rytmans might as well get used to the fact that they would be broke. Attorney Jacobson on behalf of the Kofkoff defendants told the Rytmans that the Kofkoff defendants would take the money due to the Rytmans under the Egg Supply Agreement and use it to pay off the $425,000 then fraudulently claimed due on the $500,000 line of credit. The defendant Joseph Fortin also told the Rytmans that the Kofkoff defendants had

a court order to seize their chickens.

146. The defendant Attorney Jacobson and the Kofkoff defendant Joseph Fortin also told the Rytmans that without the payment to the Rytmans for eggs under the Egg Supply Agreement that the Rytmans would be unable to feed their chickens and the chickens would die.

147. Based upon the fraudulent statements that the Kofkoff defendants had a court order to seize the Rytman chickens; the extortionate act by the Kofkoff defendants of unilaterally refusing to pay under the Egg Supply Agreement; the extortionate act by the Kofkoff defendants of stating that they would not make any future payments to the Rytmans under the Egg Supply Agreement and based upon the fraudulent representation of Attorney Milton L. Jacobson of Brown, Jacobson, Jewett and Laudone, P.C. advising the Rytmans that they had no choice but to transfer their one million chickens to the Kofkoffs, the Rytmans had no choice but to agree to the transfer which they did. The Kofkoffs defendants and Milton L.

Jacobson also obtained the Rytman's signatures on a document allowing them to occupy the various farms rent free. The Rytmans were not aware of this at the time.

148. On February 20, 1987 the Rytman chickens were worth in excess of $1,300,000 and the debt due to the Kofkoff defendants by their record approximately $395,000.

149. When the Rytmans transferred their chickens, the grain inventory on the various farms, the supplies and parts on various farms under the threat that their chickens would die in they thought they would receive:

(a) A satisfaction of their debts to the Kofkoff defendants and a release of the Kofkoff mortgages on the Rytman farms that secured the line of credit.

(b) Payment out of money due to the Rytmans under the Egg Supply Agreement of the payroll for Julius Rytman's and Dora Rytman's employees for the week ending

February 20, 1987 and the week ending February 13, 1987 in the approximate amount of $51,000.

(c) An agreement to purchase the Rytman home farm and two houses in Franklin and the right for the Rytmans to purchase said properties back for the same price that the Kofkoff defendants paid for them.

(d) The transfer would be held in escrow until (a), (b) and (c) were satisfied.

150. The Kofkoff defendants left the meeting and conferred with their attorney (and Rytmans' attorneys) Milton L. Jacobson and Glenn Gordon of Brown, Jacobson, Jewett and Laudone. The Kofkoff defendants returned to the meeting and the Kofkoff defendants themselves and through their attorney Milton L. Jacobson, agreed to these four items.

151. Glenn Gordon prepared the bills of sale for the transfer of Julius Rytman and Dora Rytman chickens and other personalty and a letter agreement dated February 20, 1987 which was never completely filled in concerning the sale of the Rytmans' home

farm and 2 houses in Franklin.

152. Julius Rytman and Dora Rytman signed the bills of sale for their million plus chickens and gave them to Milton L. Jacobson and Glenn Gordon to hold in escrow until all of the other conditions were met. 153. Glenn Gordon and his clients Samuel Kofkoff, Robert Kofkoff, Joseph Fortin and their employee Blair Hagey left the meeting to go and prepare and execute the releases of mortgages on the Rytman properties.

155. The defendant Glenn Gordon, who was also the Rytmans' attorney, represented that he would prepare the releases to the Colchester Foods mortgage and have them executed by the Kofkoff defendant, Colchester Foods, Inc.

156. In fact, the defendant Glenn Gordon did not prepare releases and the Kofkoff defendants did not execute and refused to execute releases as they represented that they would.

157. Attorney Glenn Gordon did hold the bills of sale in escrow for awhile but then Kofkoff's Colchester Foods, Inc. took the chickens even though

only one of the conditions were not met namely, the payroll.

158. The Rytmans were under tremendous pressure during these events. As their businesses were being destroyed by Colchester Foods the Rytman's own attorney was orchestrating the events. Not only had Milton L. Jacobson been their attorney for 30+ years but he had been considered a friend. The Rytmans were overwhelmed by the events occurring in February of 1987. The Rytmans transfered their assets under economic duress and emotional duress caused by Colchester Foods, Inc., Samuel Kofkoff, Robert Kofkoff and Joseph Fortin's failure to pay pursuant to the agreements and such economic duress resulted in loss, damage and detriment to the Rytmans and/or the Rytmans had no adequate remedy of law. Further, the transfer occurred because Milton L. Jacobson, the Rytman's trusted friend and Attorney offered the Rytmans no other alternative and was aiding and abetting the Kofkoff defendants in their "forced" taking of the chickens and possession of the farms.

159. Colchester Foods, Inc., was paid in full for

the note that was secured by $500,000.00 mortgage in on or about February 20, 1987 as indicated above. Despite the fact that Colchester Foods, Inc., has been paid in full on the $500,000.00 note, Colchester Foods, Inc. still refuses to release the same; has continued to falsely claim that there is still substantial money under it.

160. Colchester Foods, has not provided releases for the satisfaction of said debt which has resulted in loss, damage and detriment to the Rytmans as described above.

161. The Kofkoff/Colchester Foods extorted one million chickens from Julius Rytman and Dora Rytman by use of a wrongful means to achieve a wrongful objective and were aided by Milton L. Jacobson, Brown, Jacobson, Jewett & Laudone and Glenn Gordon..

162. Brown, Jacobson, Jewett and Laudone, P.C., Milton L. Jacobson and/or Glenn M. Gordon, failed to obtain the releases from Colchester Foods, and, in fact, assisted Colchester Foods, in taking Rytmans' assets causing loss, damage and detriment to the

Rytmans. Milton L. Jacobson, Glenn Gordon and Brown, Jacobson, Jewett & Laudone were instrumental in bringing the Rytmans to their knees in February of 1987 for the benefit of their other client, Samuel Kofkoff, Robert Kofkoff, Joseph Fortin, Blair Hagy, Colchester Foods, Inc., Fitchville Realty, Inc., Kofkoff Egg Farm Limited Partnership.

KOFKOFF'S FRAUD UPON A FRAUD:

THE KOFKOFFS' OWN RECORDS SHOW THAT THE RYTMAN DEBT IS PAID UNDER ALL VERSIONS OF THE KOFKOFF DEFENDANTS' STORY

163. Joseph Fortin, Samuel Kofkoff, Robert Kofkoff, Blair Hagey, Colchester Foods, Inc. and the defendant Glenn Gordon now fraudulently claims Colchester Foods, Inc. was to to give a release on February 2, 1987 when the chickens were taken and that Colchester Foods was to value the chickens taken on February 20, 1987 and credit that value to the amount of the debt due to Colchester Foods by the Rytmans (a debt which as indicated was fraudulently calculated by Colchester Foods, Inc., Blair Hagey,

Samuel Kofkoff, Robert Kofkoff and Joseph Fortin).

164. Colchester Foods had fraudulently added to the already fraudulently claimed debt of $394,905.30 an additional $230,441.92 for a total debt of $625,343.86.

165. To this fraudulently calculated debt, Colchester Foods Inc. deducted what the Kofkoff defendants (in particular Samuel Kofkoff and Joseph Fortin) valued the one million plus chickens (not including supplies and new parts taken) taken on February 20, 1987 of $350,000.

166. Despite the fact that the Kofkoff defendants gave Julius Rytman and Dora Rytman a credit for only $350,000 for the million plus chickens and supplies, the Kofkoff defendants Colchester Foods and Pierce Hollow Farms, Inc. actually valued and received for chickens sold the Rytman chickens alone (without the supplies and new parts) at $860,000+ for all chickens.

167. Colchester Foods, Inc. recorded on its books that the debt from the Rytmans was $540,924.46

and that debt paid or was charged off in February 1987. (This follows the oral agreement made to Julius Rytman and Dora Rytman on February 20, 1987 that the debt to Colchester Farms, Inc. was satisfied by the transfer of the million plus chickens. This debt was paid by Colchester Foods, Inc. valuing the chickens at $440,924.46 and $100,000 being charged off.)

168. After having written it off as paid, a portion of the debt, namely $190,000 was put back on the corporate books of Colchester Foods, Inc. in May 1987 and that other fraudulent charges have been added to it.

The Kofoff defendants have used this mortgage tocontrol the plaintffs enterprise in 1987 and to retain standing in all foreclosures brought since then relative to the plaintiff's enterprises' properties.

169. The Kofkoff defendants have used this mortgage to control the plaintiffs enterprise in 1987 and to retain standing in all foreclosure actions

brought since then relative to the plaintiff's enterprises' properties.

BROWN JACOBSON CONTINUES TO REPRESENT THE PLAINTIFFS AND THE KOFOFF DEFENDANTS

170. Further, Milton L. Jacobson, Glenn M. Gordon and Brown, Jacobson, Jewett and Laudone, P.C. continued to represent Julius Rytman and Dora Rytman and Colchester Foods, Inc. despite the fact that it knew the debt was paid in full and despite the fact that it knew Colchester Foods, Inc. was falsely representing it was not paid in full. Milton L. Jacobson, Glenn M. Gordon and Brown, Jacobson, Jewett & Laudone, P.C., knew that Colchester Foods, Inc., was paid in full, but falsely represented that Colchester Foods, Inc., was not paid in full to the Rytmans' detriment and damage.

171. The mortgages securing the alleged debt owed to Colchester Foods are invalid and void in that the underlying debt has been satisfied.

172. Colchester Foods, Inc. claim to said mortgage is made maliciously to hinder and/or harass

the plaintiff, and/or to embarass them and/or cloud their title to said property and has caused Rytmans loss, damage and detriment.

173. Colchester Foods, Inc., in failing to release said mortgage and/or claiming, in court proceedings and otherwise, that the mortgage and debt are still valid, are acting maliciously and in order to vex and harass Rytmans and knew that the mortgage is of no legal effect and that by failing to release said mortgage, there is a cloud on Rytmans' title and a slander on Rytmans title and knew that the failure to release saidmortgage would decrease the value of the real estate and/or render it unmarketable causing loss, damage and detriment to the Rytmans.

174. By the malicious and wrongful acts of the Kofkoffs Colchester Foods, Inc., the Rytmans have suffered and continue to suffer damages.

175. The conduct of Kofkoff's Colchester Foods, Inc., was fraudulent and/or oppressive and/or malicious.

176. The Rytmans were not aware that they had

provided Colchester Foods, Inc., with free occupancy of the chicken farms in that they, given the severe pressure they were under never read the documents they signed. Apparently, Attorney Milton L. Jacobson did not advise CNB that free occupancy was given to Colchester Foods, because CNB, through its Attorney William Barnett, on March 17, 1987, sent by mail, a letter to Milton L. Jacobson telling him that as attorney for Kofkoff, Milton L. Jacobson should tell Kofkoff that CNB expected to receive use and occupancy payments for Kofkoff's chickens occupying the Rytman farms.

177. Although Rytmans clearly had causes of actions against Colchester Foods, Samuel Kofkoff, Robert Kofkoff and Joseph H. Fortin, Brown, Jacobson, Jewett and Laudone, P.C., failed to pursue the claim, and, in fact, told Rytmans not to pursue their claim causing loss, damage and detriment to the Rytmans.

178. At the time the chickens and personalty were transfered, Robert Kofkoff and Joseph Fortin signed a letter which promised that Robert Kofkoff

and Joseph Fortin would purchase the Rytman's home and the Rytmans could live there. The purchase price and the time Rytman could live there were left blank. The threat of losing their home would be the club used continuously by all defendants to force the Rytmans into the transactions that lay ahead.

CONSPIRATORIAL MEETING OF DEFENDANTS TO FORMULATE FRAUDULENT PLAN OF LIQUIDATION

179. On February 24, 1987, Milton L. Jacobson and Glenn Gordon held a meeting with CNB, its Attorneys and NSS and its Attorneys. At this meeting, the same attorney who orchestrated the transfer of Rytmans' assets to Colchester Foods, told the banks that Rytman was out of business. From that meeting on, the focus was on getting Colchester Foods and the Kofkoffs to purchase Rytmans' property. This meeting also resulted in NSS's demand to be a participant in all discussions and demand that, prior to any sales of Rytman properties, NSS give its consent. This demand was made and assented to by CNB even though NSS had no legal claim against Rytmans' assets. NNS's

demand to be involved in the liquidation of the Rytman's was formulated in a letter by NSS's attorney, Mark Block, sent via the mail, the CNB's Attorney, Lee Spielmand on February 25, 1987. CNB responded by letter, sent through the mail, from attorney Spielman to Mark Block, that it would review information with NSS but woudl make its own determination as to the value of Rytman properites other than the mill. It was clear that the tnesion between the banks was running high and although Milton L. Jacobson, Glenn Gordon and Brown, Jacobson, Jewett & Laudone knew it, the Rytmans did not.

180. Milton L. Jacobson and Glenn Gordon were fully aware of the dispute between NSS and CNB but never told the Rytmans. Milton L. Jacobson and Glenn Gordon now became the point men for satisfying CNB, NSS, Colchester Foods and the Kofkoffs. They then became the center of the scheme to take the Rytmans' assets and transfer them to Colchester Foods and the Kofkoffs.

181. As a result of turning over the chickens

and personalty, and occupancy of their farms, the actions of CNB and the fraud of Colchester Foods, Julius Rytman's and Dora Rytman's businesses, including the proprietorship, Colchester Egg Farms, Inc. and High Tech Feed, failed and the Rytmans suffered loss, damage and detriment.

FAILURE TO GIVE RELEASES CREATED LIQUIDATION

182. The failure of Colchester Foods, Inc. to release its mortgages affected the ability of Julius Rytman and Dora Rytman to sell their properties from February 20, 1987 forward, thereby hindering their efforts to prevent the foreclosure action that was brought by CNB causing loss, damage and detriment to the Rytmans. Milton L. Jacobson, Glenn Gordon and Brown, Jacobson, Jewett & Laudone furthered the cause of Colchester Foods and Samuel Kofkoff by not demanding the releases and by not seeking and advising the Rytmans to seek new counsel in that the attorneys had a clear duty to do so. In fact, the Rytmans were advised by Milton L. Jacobson not to bring suit against the Kofkoff defendants.

183. The failure of Brown, Jacobson, Jewett and Laudone, P.C., Milton L. Jacobson and Glenn M. Gordon to obtain releases of mortgages from Colchester Foods, Inc. affected the ability of Julius Rytman and Dora Rytman to sell their properties from February 20, 1987 forward thereby hindering their efforts to prevent and/or preventing the foreclosure action that was brought by CNB and this pending action causing loss, damage and detriment to the Rytmans.

MEETING OF DEFENDANTS, FORMULATION OF PLAN

184. After the Plaintiffs had their one million chickens wrongfully taken from them on Friday, February 20, 1987, a meeting was scheduled for the beginning of the following week in Hartford. This meeting was attended by CNB, NSS and the Defendant Jacobson.

185. At the February 24, 1987 meeting, the Defendant Jacobson presented the proposal for the Kofkoff Defendants, Robert Kofkoff and Joseph Fortin, to purchase the afore-mentioned properties. CNB through their attorney, William Barnett, indicated

that the proposal was agreeable with CNB. The NSS, through its Vice President Mary J. Woldecki, refused to agree with the proposal and told the defendant Jacobson that the Plaintiffs, Julius Rytman and Dora Rytman, could not sell their home farm and then buy it back for any amount of money.

186. On February 25, 1987, the NSS through one of its attorneys, Mark Block, sent a letter via mail to Attorney Lee Spielman, an attorney for CNB This letter describes the following:

(a) A meeting with the Defendant Jacobson at Lee Spielman's office wherein Attorney Spielman was present.

(b) The letter clearly indicates that the Defendant Jacobson made sales proposal at the February 24, 1987 meeting. Attorney Block through this letter communicated to the Defendants' CNB's counsel the NSS position and the agreement that NSS and CNB reached. This posiiton is in part:

(i) NSS questions the collectibility of the High Tech mortgage and the direct debt to CNB.

(ii) "The Norwich Savings Society expects that there will be no decisions made concerning disposition of the collateral securing the High Tech mortgage or the Rytman individual guarantees without the Norwich Savings Society consent." (Emphasis added)

(iii) That Mary Jo Wlodecki, (Vice President, NSS) Daniel Dennis (President, NSS); Arthur Beeman (Vice President, CNB); Jeffrey White (Vice President, CNB) reached an agreement in February 25, 19987. This agreement between these individuals

for the Defendant Banks was:

> Only the Scotland Property known as the golden Goose Farm was approved for immediate sale.
>
> No further sales would occur without NSS prior approval.

187. This is clear evidence of NSS using its claim of a breach of agreement by CNB to grant it rights to prevent the sales of Plaintiffs property

not secured by the participation loan.

188. Unbeknownst to the Plaintiffs' at the time, the NSS and CNB began to formulate a scheme to segregate those of the Plaintiffs' enterprises' assets, the Preston Home Farm (without the Rytman home and limited acreage) and two chicken farms, for sale.

189. The secret agreement that NSS and CNB reached to allow the Plaintiffs to sell only the Golden Egg Goose Farm in Scotland was implemented in part through the use of the mails. On February 25, 1987, the Defendant Gordon sent a letter to Jeffrey White, Vice President of CNB, containing a necessary document for the sale of said farm. The letter sets forth the anticipated consideration for the Golden Egg Goose Farm at $175,000. The letter asks that CNB return the partial release so that the sale of the Golden Egg Goose Farm could be sold.

190. On February 26, 1987 in furtherance of the scheme to defraud the plaintiffs (and CNB agreement

that go along with NSS limited consent) Jeffrey White, CNB Assistant Vice President, sent a letter via the mail to CNB attorney, Rafael Santiago. Attached to that letter was a copy of the February 25, 1987 Gordon Letter with the partial release. Mr. White asked Attorney Santigo to "review the propriety of the release and to advise him according".

191. On February 26, 1987, Attorney Lee Spielman, sent a letter via the mail to Attorney Block acknowledging receipt of the February 25, 1987 Block letter. Attorney Spielman indicated that he would talk to his client CNB about the February 25, 1987 Block letter and will communicate with Attorney Block in the near future. A copy of this letter was sent via mail to CNB.

192. Immediately after the February 24, 1987 meeting, on February 27, 1987, Attorney Block requested Richard Barry, an MIA Appraiser to appraise certain of the Plaintiffs' properties.

193. Incident to this scheme, the NSS by its attorney, Mark Block, sent via mail a letter to

Richard Barry dated March 2, 1987 confirm Attorney Block's conversation with Mr. Barry. Copies of the March 2, 1987 Block letter was sent via mail directly to CNB attorney, Lee Spielman, and to NSS Vice President, Mary Jo Wlodecki. This Block letter clearly indicates that the NSS and CNB were interested in appraisals of the following pieces of properties:

(1) the chicken farm know as the Schwartz Farm;

(2) the residence of Julius Rytman and Dora Rytman of forty years.

(3) the chicken farm know as Hilltop Farm.

194. This letter also clearly indicates that NSS and CNB were interested in the sale of (1) and (3) as raw land and as building lots (not as chicken farms). The Preston Home Farm was to be divided as follows in the appraisal:

The residence property should be appraised as existing, and with the house and house lot out, and the balance of the property which we believe to be in excess of 100 acres subdivided, using the existing road frontage.

Exhibit 12. This conduct clearly indicates evidence NSS and CNB planned to sell Rytmans' Preston Farm (residential property) separately from their house and house lot as early March 2, 1987. This fact was fraudulently concealed from the Plaintiffs. Such a sale would have been fraudulent in that plaintiffs did not know that CNB and NSS were agreeing to this to settle their dispute.

195. This letter also indicates that CNB through its Assistant Vice Presient, Jeffrey White, will be using the mails to send copies of the properties descriptions of these properties to implement their scheme.

196. On March 3, 1987 CNB Assistant Vice President, Jeffrey White, mailed the executed Partial Release of Mortgage that had been sent to him via mail to the Defendant Gordon. This use of the mails was incident to NSS and CNB scheme to allow for the sale of only the Golden Egg Goose Farm. This letter was sent on the same day CNB Attorney Rafael A. Santiago had a letter hand-delivered to Jeffrey White concerning this release. (A copy of the March 5, 1987 Santiago letter is attached hereto and made part hereof as Exhibit 15.) This Santiago letter was in response to Jeffrey White's February 26, 1987 White letter to Santiago which was sent to Santiago for legal advise on the release so that the Golden Egg Goose Farm could be sold in accordance with the secret scheme devised by NSS and CNB.

KOFKOFF DEFENDANT'S JOSEPH FORTIN'S EXTORTIONATE THREAT TO CREATE ENVIRONMENTAL PROBLEMS AT THE FARMS THE KOFKOFFS WERE OCCUPYING WITH THE PLAINTIFFS' TRANSFERRED CHICKENS AFTER FEBRUARY 20, 1987

RYTMANS' ENTERPRISES' ENVIRONMENTAL PROBLEMS AND KOFKOFF THREAT AND CRIMINAL CONDUCT RELATIVE TO THE CREATION OF ENVIRONMENTAL CONDITIONS ON THE HILLTOP FARM AND THE SCHWARTZ FARM LEADING TO AN ARREST WARRANT FOR JULIUS RYTMAN

197. For many years the plaintiffs Julius Rytman and Dora Rytman had been involved in enforcement proceedings with the Connecticut State Department of Environmental Protection and the Connecticut Department of Agriculture relative to manure storage and water discharge from various Rytman chicken farms.

198. Samuel Kofkoff, Robert Kofkoff, Joseph Fortin and Blair Hagy were aware of these enforcement proceedings as was Rytmans' Milton L. Jacobson, Glenn Gordon and Brown, Jacobson, Jewett and Laudone, P.C. who represented the Rytmans with these enforcement

proceedings.

199. On or about February 20, 1987 Julius Rytman and Dora Rytman were in general compliance with the enforcement orders of the Department of Agriculture and the Department of Environmental Protection through various manure management efforts including the assistance of Harry Sachonchik of Franklin, Connecticut, who was hired by Julius Rytman and Dora Rytman to control the Hilltop Farm.

200. On February 25, 1987 Joseph Fortin called Julius Rytman and told him that the Kofkoffs wanted to purchase CNB's position; that is, their mortgages and security interests in the plaintiffs' properties. Julius Rytman responded that he could go ahead and buy it. Joseph Fortin told Julius Rytman that the Kofkoffs needed Julius Rytman's cooperation once they bought CNB's position and ultimately end up with all of the plaintiffs' enterprises' assets. Joseph Fortin told Julius Rytman that if Julius Rytman cooperated with the Kofkoffs once they bought CNB's position that the Kofkoffs would give to Julius

Rytman his home farm in Preston free and clear. Julius Rytman told Joseph Fortin: "Go to Hell. You must be sick." Joseph Fortin responded by threatening Julius Rytman in substance as follows: "You think that you have had environmental problems before on your farm, wait until you see what you have now."

201. Julius Rytman right after that contacted his attorney Milton L. Jacobson and told him about Joseph Fortin's threat.

202. On or about that time Samuel Kofkoff and/or Robert Kofkoff ordered Harry Sachouchik off the Hilltop Farm and stopped managing the manure situation that was then being created by the chickens that Colchester Foods, Inc. had taken from Julius Rytman and Dora Rytman on February 20, 1987.

203. About a week after February 20, 1987 and after Joseph Fortin's phone call to Julius Rytman threatening him with major environmental problems on the farm, Julius Rytman ordered that the Rytman employees that now became Kofkoff's Colchester Foods,

Inc./ Pierce Hollow employees that were maintaining manure management on the Schwartz Farm, be laid off or removed from the tasks of managing said manure. The Schwartz Farm consisted of "shallow pit" coops which had to be cleaned at least once per week. The Kofkoff defendants through Joseph Fortin stopped this cleaning. The manure built up to a point where it went into the bottom of the cases that housed the chickens. Additionally, dead chickens were moved from other farms and taken to the Schwartz Farm by Colchester Foods, Inc./Pierce Hollow. hese additional dead checkens intensified the problems that existed on the Schwartz Farm. Dead chickens were being thrown on the ground. Flies proliferated. Rodents were everywhere. These conditions resulted in newspaper articles and T.V. coverage of the condition. Joseph Fortin stopped the other management proceedings including spreading fly grit and rodent poison.

204. Julius Rytman told Milton Jacobson that the Kofkoffs were throwing around dead chickens and creating an environmental problem and asked Milton

Jacobson to take legal action against the Kofkoffs. Milton Jacobson never responded.

205. Immediately after the time these events occurred, Attorney Milton L. Jacobson was told that Julius Rytman had held a gun to the head of Robert Kofkoff due to the tremendous stress the fraud and extortion of Colchester Foods had caused him and had demanded that the Kofkoff defendants return the chickens. Although it was clear to Milton L. Jacobson that the Rytmans were distraught over these events, because of the same incident and many other incidents throughout 1987, Milton L. Jacobson continued to represent both sides and continued to work for the Kofkoffs' main objective which was to acquire the rest of the enterprises assets.

206. Colchester Foods, Pierce Hollow Farms, Inc., Joseph H. Fortin and Robert Kofkoff, either individually or as agents or employees of Colchester Foods, when they removed the chickens from the Schwartz farm, they left behind dead chickens, live chickens, grain spilled out on the ground, a truck

with chicken manure and they removed covers from pits that held dead chickens causing loss, damage and detriment to the Rytmans.

207. Colchester Foods, Inc., Pierce Hollow Farms, Inc., Samuel Kofkoff, Robert Kofkoff, Joseph H. Fortin and Kofkoff Egg Farm Limited Partnership carried out the extortionate threat made by Joseph Fortin by deliberately failing to maintain some of the Rytman chicken farms in an effort to create problems with governmental agencies to bring into question the value and/or marketability of Julius Rytman's and Dora Rytman's farms in general and the Schwartz Farm and/or Hilltop Farm in particular and/or to coerce the Rytmans into transferring their properties for less than fair values causingloss, damage and detriment to the Rytmans. This conduct on the part of Colchester Foods, Inc., Pierce Hollow Farms, Inc., Samuel Kofkoff, Robert Kofkoff, Joseph Fortin and Kofkoff Egg Farm Limited resulted in the Connecticut State's Attorney Office obtaining an arrest warrant for Julius Rytman for violations of

the Intense Poultry Act.

208. The Rytmans' attorneys, Brown, Jacobson, Jewett and Laudone, P.C., Milton L. Jacobson and/or Glenn M. Gordon, did nothing to prevent Colchester Foods, Inc., Pierce Hollow Farms, Inc., Samuel Kofkoff, Robert Kofkoff, Joseph H. Fortin, and/or Kofkoff Egg Farm Limited Partnership from creating (and/or alleviating) this problem. In fact, said attorneys advised Julius Rytman and Dora Rytman to sell the Schwartz Farm and escrow funds to pay for a clean-up that was, in part or in total, the responsibility of Colchester Foods, Inc., Pierce Hollow Farms, Inc., Samuel Kofkoff, Robert Kofkoff, Joseph H. Fortin, Kofkoff Egg Farm Limited Partnership causing loss, damage and detriment to the Rytmans.

209. Brown, Jacobson, Jewett and Laudone, P.C., Milton L. Jacobson and/or Glenn M. Gordon, never advocated on behalf of the Rytmans even though they Rytmans asked them to, that Colchester Foods, Inc., Samuel Kofkoff, Robert Kofkoff, Joseph H. Fortin,

Kofkoff Egg Farm Limited Partnership and/or Fitchville Realty, Inc. should be responsible, in part or in total, for this clean-up causing loss, damage and detriment to the Rytmans.

210. Additionally, CNB and NSS were told by Milton L. Jacobson that Kofkoff created the problem, but given the fact that Kofkoff was the bank's choice to take over Rytman, nothing was done.

211. The conditions created and/or allowed to exist on the Schwartz Farm and the Hilltop Farm, and that resulted in the distressed sale of the Schwartz Farm, affected CNB's and/or other creditors opinions of the valuation of the security it or they had on the Rytman real estate. This was part of the damage caused by the Kofkoffs' defendants extortionate act to acquire the enterprises' assets.

212. The condition of the Schwartz Farm resulted in the proliferation of flies and caused other health hazards, which resulted in adverse publicity to Rytmans leading the Department of Environmental Protection and/or other governmental agencies and/or

other instrumentalities to seek the arrest of Julius and Dora Rytman. In fact, the State Attorney's Office obtained an arrest warrant for Julius Rytman's arrest.

213. In an effort to avoid said arrest, and because Milton L. Jacobson, Glenn Gordon and Brown, Jacobson, Jewett & Laudone, P.C. did not take any action against the Kofkoff defendants, the Rytmans had to sell the Schwartz Farm a price for less than its fair market value and not as a chicken farm but as raw land or be arrested. Julius Rytman was going to be arrested for the conditions created and exasperated by Joseph Fortin, Robert Kofkoff, Samuel Kofkoff, Colchester Foods, Inc. and Pierce Hollow Farms, Inc. CNB made management decisions relative to sales price and fraudulently represented that CNB had the escrow of funds withheld from the sale so that theywould be available to be used by the plaintiffs to clean up Hilltop Farm..

214. The sale of the Schwartz Farm was negotiated and agreed to by the buyer, another client

of Milton L. Jacobson and Brown, Jacobson, Jewett and Laudone, P.C., and CNB. CNB, approached the buyer and agreed to sell the property, upon which it had a mortgage, for less than the fair market value. CNB did this even though it knew that if its other borrower, Kofkoff, had caused problems and exasporated the problem and that the Kofkoff defendants were responsible to clean up the environmental mess it had created and that, a greater price could be obtained for the property if the clean-up was done prior to the same or if the environemntal problem did not exist.

215. Julius Rytman and Dora Rytman were faced with no alternative. Julius Rytman would be arrested or they had to sell the Schwartz Farm to Seymour Adelman (another client of Milton L. Jacobson and Brown, Jacobson, Jewett and Laudone, P.C.) so Dora Rytman signed a deed to the Schwartz Farm on april 24, 1987. This transaction was recorded on April 29, 1987.

216. CNB agreed to this sale at a time when it

had been led to believe that Kofkoff's Colchester Foods, Inc., had released the mortgage it held on all of the Rytmans properties when the one million Rytman chickens were transferred to Kofkoff's Colchester Foods, Inc. on February 20, 1987 and CNB entered into an escrow agreement relative to a fund of $50,000 on May 28, 1987 for the manuer clean-up and agreed to provide the release of mortgage on that farm. (The actual deed had been signed by the Rytmans on April 24, 1987 to avoid the arrest. At the time Rytman executed the deed Julius Rytman and Dora Rytman though that Kokfkoff's Colchester Foods, Inc. had released its mortgage as agreed by Colcheseter Foods, Inc. on February 20, 1987 in fact Colchester Foods, Inc. had not released its mortgage.

217. The failure on the part of Colchester Foods, Inc., Samuel Kofkoff, Robert Kofkoff, Joseph H. Fortin, Kofkoff Egg Farm Limited Partnership and/or Fitchville Realty, Inc., to release said mortgages affected CNB's, and/or creditors of the Rytmans view of the credit worthiness of the Rytmans

and view of the Rytmans ability to come up with solutions to their problems.

218. In May of 1987, in accordance with the common scheme, Colchester Foods, Inc., Samuel Kofkoff, Robert Kofkoff, Joseph H. Fortin, Kofkoff Egg Farm Limited Partnership and/or Fitchville Realty, Inc., offered in a letter sent via the mail from Attorney Glenn Gordon to CNB to purchase certain properties from Rytmans and negotiations were taking place directly with CNB, NSS and Samuel Kofkoff. Brown, Jacobson's office continued to represent plaintiffs and the Kofkoff defendants in the negotiations.

NEGOTIATIONS BETWEEN CONSPIRATORS TAKE PLACE OVER THE SUMMER OF 1987

219. After the Schwartz Farm was sold, defendant, Colchester Foods, Inc., released the mortgage on said farm, but still claims it is owed money pursuant to said mortgage.

220. Brown, Jacobson, Jewett and Laudone, P.C, represented Rytmans and the purchaser of the Schwartz

Farm, Seymour Adelman and know when the Rytman executed the deed to the Schwartz Farm their other client, Kofkoffs Colchester Foods, Inc. had not released its mortgage and that Kofkoffs Colchester Foods, Inc. would not release its mortgage. When Dora Rytman executed the Schwartz Farm deed the Rytmans were not told that the Kofkoff defendants Colchester Foods, Inc. had not released its mortgage on their properties.

221. On June 19, 1987, CNB exerted additional pressure by letter to Attorney Jacobson sent via the mail and informed Rytmans that if they did not have a liquidation plan within two weeks, it would start a foreclosure action. Such demand was made by CNB's Attorney, William Barnett, in a letter, sent through the mail, to Attorney Milton L. Jacobson on June 19, 1987.

222. On June 19, 1987, CNB, in the same letter, also stated that Colchester Foods, had not released its mortgages when it took Rytmans chickens and other personalty and that was contrary to its understanding

of the facts surrounding the Colchester Foods, Inc. debt and that Colchester Foods, Inc. mortgage was impairing the sale of the Schwartz property.

223. Prior to and/or including July of 1987, Rytmans indicated to CNB, in a letter set via the mail by Brown, Jacobson, Jewett and Laudone, P.C., to Attorney William Barnett that releases had been obtained from Colchester Foods, Inc. and Samuel Kofkoff, for the Schwartz Farm and other Rytman properties, and that a sale was imminent, with respect to other property of Rytmans, and that there was a very interested buyer for Rytmans land, next to the Colchester Egg, building and the Hilltop Farm. In fact, Brown, Jacobson, Jewett and Laudone, P.C. had not obtained releases other than relating to the Schwartz Farm causing loss, damage and detriment to the Rytmans.

BROWN, JACOBSON, JEWETT AND LAUDONE'S P.C. FRAUDULENT CONCEALMENT OF THE ROAD NEAR RYTMAN'S HILLTOP FARM.

224. The Rytmans had repeatedly attempted to prevent the defendants from acquiring the assets by

asserting, inter alia, that this road, New Park Road, would be built at any time soon enough to help them. Milton L. Jacobson, Glenn Gordon and Brown, Jacobson, Jewett and Laudone, P.C. kept advising the Rytmans that it would not be built soon enough to assist them in their efforts to stop the defendants from acquiring their assets.

225. Brown, Jacobson, Jewett and Laudone, P.C. was at this time the attorneys for the Norwich Community Development Corporation (hereinafter "NCDC") and a member of the NCDC which was arranging for the road and knew through its association with the NCDC that the road was about to be built.

226. Brown, Jacobson, Jewett and Laudone, P.C. (Glenn Gordon) was representing Joseph Fortin, Samuel Kofkoff, Robert Kofkoff at this time and knew that Joseph Fortin was actively preparing to purchase the small piece of property, bordering the plaintiffs property, from the NCDC and actually had a survey done prior to forcing the Rytmans into signing the October-November 1987 Agreement which was the vehicle

by which they were to acquire the Rytman properties and businesses yet concealed that information from the Rytmans. By acquiring the plaintiffs property and the adjoining piece, the Kofkoff defendants would acquire a piece of property worth in excess of what they would pay under the October 1987 Agreement.

227. Brown, Jacobson, Jewett and Laudone, P.C. was also actively representing the Connecticut National Bank at this time on matters during this same period of time. Connecticut National Bank's Vice President, Charles Hayes, was also on the NCDC and was aware of the developments concerning the New Park Road.

228. Brown, Jacobson, Jewett and Laudone, P.C. was representing the Norwich Savings Society (hereinafter "NSS") on legal matters and Attorney Vincent Laudone of Brown, Jacobson, Jewett and Laudone, P.C. was a member of the Board of Directors of the NSS. Daniel Dennis, the President of the NSS, was also the President of the NCDC and, therefore, NSS was aware of the eminent development of the New

Park Road.

229. On October 16, 1987, Joseph Fortin on behalf of Samuel Kofkoff, Robert Kofkoff, Fitchville Realty, Inc. (hereinafter "Kofkoff") and their business entities went to see Mr. Delij of Putnam Engineering and Surveying to talk to him about Kofkoff/Fitchville Realty, Inc.'s plans to acquire the Hilltop Farm and the triangular piece of property that separated the Hilltop Farm and the New Park Road that was to be constructed by Norwich Community Development Corporation of which Daniel Dennis was President. Joseph Fortin had Mr. Delij prepare a map showing the area to be conveyed to Joseph Fortin for Kofkoff/Fitchville Realty, Inc. These facts were concealed from the Rytmans.

230. On October 16, 1987 Attorney Glenn Gordon sent two pieces of mail, one to Daniel Dennis, President of NSS, and one to Thomas Gardiner, Vice President of CNB, in furtherance of Colchester Foods/Kofkoff scheme although specifically--namely, Joseph Fortin, to "acquire" certain Rytman properties

and contract rights for values which were below their fair market value. These properties and values were:

a.	All Murphy Road Land	$ 200,000.00
b.	Colchester Egg Building and land, so-called	850,000.00
c.	Hilltop Farm	500,000.00
d.	Route 32 (Franklin) multi-family house	100,000.00
e.	Jalkanen Farm	200,000.00
f.	Robella Farm	150,000.00
g.	Dydo farm (lots, house, acreage)	300,000.00
h.	Putnam Industrial Park Land	300,000.00
i.	Various building lots in Windham County	50,000.00
j.	Egg Distribution Contract and Commissions	250,000.00
Total		$2,900,000.00

This letter was fraudulently represented that the fair market values of the properties.

231. Additionally, the October 16, 1987 mailed letter asked that the Rytman home of 40 years be

released to Joseph Fortin and Samuel Kofkoff, Robert Kofkoff and their corporate entities so that they could use the Rytman home to extort the Rytmans into signing the October-November 1987 Agreement. The October-November 1987 Agreement provided for Joseph Fortin, Samuel Kofkoff, Robert Kofkoff, Fitchville Realty, Inc., to acquire this Rytman property for free.

232. On October 16, 1987, Joseph Fortin for Kofkoff/ Fitchville Realty asked Glenn Gordon to mail a letter to Daniel Dennis, President of the Norwich Savings Society, and Thomas Gardiner, Vice President of the Connecticut National Bank, to set forth Kofkoff/Fitchville Realty, Inc.'s plan to acquire various Rytman properties including the Hilltop Farm and to negotiate a "put" from the NSS. This "put" was to be a contractual obligation on the part of the NSS to repurchase the Hilltop Farm for $800,000.00, Dydo Farm for $400,000.00, Putnam Industrial Land for $450,000.00 for a total of $550,000.00 more than what Kofkoff/Fitchville Realty,

Inc. would pay for them. These facts were concealed from the Rytmans.

233. Milton L. Jacobson, Glenn Gordon and Brown, Jacobson, Jewett and Laudone, P.C. concealed from the Rytmans that an individual named Andre Messier had offered $850,000.00 for the mill along without tools and parts and that the offer was rejected prior to Rytman being forced to sign fraudulent and extortionate October-November 1987 Agreement. Attorney Mark Block informed Attorney Marvin Horowitz, Mr. Messier's attorney, of the revocation of the acceptance of the $800,000.00+ offer from Andre Messier on behalf of the NSS and CNB in an October 27, 1987 letter mailed to him. Attorney Block also confirms this fact to Attorney William Barnett of Hoberman and Pollack, P.C., CNB's attorney, by a letter mailed to him on October 27, 1987. This offer, acceptance and revocation was concealed from the Rytmans.

NSS CONTINUES TO PRES ITS CLAIM AGAINST CNB THROUGH THE OCTOBER-NOVEMBER 1987 AGREEMENT AND THEREAFTER

234. NSS continued to raise its claimed breach of the Participation Agreement as late as two weeks before the execution of the October 1987 Agreement. At a meeting on October 16, 1987 where Daniel Dennis, Mary Jo Wlodecki and Mark Block was present CNB's Vice President, Thomas Gardiner, was questioned why CNB "did business with Julius taking over the Feed Mill." Mr. Gardiner noted, " I told them Dan Dennis was advised and he approved verbally of the deal."

235. Finally, clear evidence of NSS threatened litigation against CNB from December, 1986 forward is the NSS own internal memo dated March 28, 1988 from Mary Jo Wlodecki to NSS officer James Brown. This memo was written after the plaintiffs challenged the October-November 1987 Agreement as willbe discossued infra.

The March 28, 1988 Memo clearly indicates the following:

1) Julius Rytman and Dora Rytman took over High Tech Feeds, Inc..

2) "At this point, there seems to be a discrepancy as to whether NSS was even asked if

we would agree to the takeover by Julius and Dora Rytman."

3) "As lead bank for this loan, it is CNB's fiduciary responsiblity to not only protect themselves but also to protect NSS."

4) "As far as litigating against CNB, this is not common knowledge and therefore has not been mentioned in any of the previous past-due reports." This is clear evidence that NSS went to incredible lengths to conceal what it was doing to CNB -- namely, it intentionally omitted the information from the normal records of the NSS.

5) "With regard to your question to the timing of liquidation on all of the properties, this is difficult to answer; as indicated to you sometime ago, Mr. Rytman has now seeked counsel, Donald Beebe, to litigate against CNB and has refused the $3,000,000 offer from Sam Kofkoff. NSS has also seeked counsel to review all of the collateral and documentation. The original

meeting set for March 17 with Attorney Miller had been canceled because of Dan being out. A new time is still in the process of being set up. Upon meeting with Sid Miller, we will then have a better feel of whether we have a suit against CNB. Mark Block will be forwarding to you a listing of all the properties and our lien positions of each one. Clayton is in the process of reviewing the Hi-Tech files and will give us a list of properties and their appraised values."

THE SIGNING OF THE OCTOBER 1987 AGREEMENT

236. On October 31, 1987, Rytmans were told by counsel to attend a meeting wherein they signed a document entitled "Agreement", by and among CNB, The Norwich Savings Society, the Federal Land Bank, Fitchville Realty, Inc., Colchester Foods, Rytmans, Julius and Dora Rytman Proprietorship, Colchester Egg and Pine Crest Duck Farm Trust (hereinafter the "October 1987 Agreement").

237. The Connecticut National Bank, the Norwich Savings Society, Samuel Kofkoff, Robert Kofkoff,

Joseph Fortin, Kofkoff Egg Farms Limited Partnership, Colchester Foods, Inc., Fitchville Realty, Inc., Milton L. Jacobson, Glenn Gordon and Brown, Jacobson, Jewett and Laudone, P.C. knowingly devised a scheme or artifice to defraud or to obtain money by false pretenses. Part of that scheme was the October 28, 1987 to November 2, 1987 Agreement (hereinafter "October Agreement") which was discussed by the defendants through the mail and wire communications in violation of 18 U.S.C. Sec. 1341 and Sec. 1343. At various times from, at least, November, 1986 through, at least, August of 1989, relating to the formation, execution and implementation of the October Agreement which would result in the transfer of plaintiff's assets to the defendants.

238. The terms of the October, 1987 Agreement were drafted and agreed to by many of the parties on October 28, 1987, except Rytmans, who were not present on October 28, 1987. Brown, Jacobson, Jewett and Laudone, P.C., Milton L. Jacobson and Glenn M. Gordon, represented Rytmans, and Fitchville Realty,

Inc., Colchester Foods, Kofkoff Egg Farm Limited Partnership, Kofkoff-Fortin Management Associates, Samuel Kofkoff, Robert Kofkoff and Joseph H. Fortin. The Agreement was signed by Rytmans on October 31, 1987 under economic duress and/or mental distress as a result of the conduct set forth in this complaint resulting in loss, damage and detriment to the Rytmans. Other parties signed it on November 2, 1987.

239. At the time the Rytmans signed the Agreement on behalf of themselves and their businesses, neither one of them had read the Agreement.

240. At the time the Rytmans signed the Agreement on behalf of themselves and their businesses, Julius Rytman was heavily medicated, had taken in excess of 22 tablets of Xanex, 25 milligrans and Dexophin 2 pills 100 milligrams plus alcohol, and was not competent when he signed the Agreement. Such incompetence was obvious to Milton L. Jacobson and Glenn Gordon because Julius Rytman did not look well and Milton L. Jacobson witnessed Julius Rytman

banging his head against the wall of Milton L. Jacobson's office because he was so distraught over what was happening to the enterprise.

241. At the time the Rytmans signed the Agreement for themselves, and their businesses, they were under duress caused by the defendants.

242. At the time the Rytmans signed the Agreement for themselves, and their businesses, they were under economic duress caused by the defendants.

243. During the period of time from approximately October 24, 1987 to November 2, 1987, Joseph Fortin was in Florida. Robert Kofkoff called him from Connecticut via the telephone concerning the efforts of the defendants to acquire the Rytman enterprise(s) through a scheme and artifice and/or extortion that was memorialized in part by the October - November 1987 Agreement and other agreements associated therewith and talked to Joseph Fortin about them. Robert Kofkoff also informed Joseph Fortin via the telephone from Connecticut to Florida that Joseph Fortin should travel directly to

Bradley International Airport from Florida and to drive directly to the office of Hoberman and Pollack, P.C. to meet with the defendants and their attorneys to execute the October - November 1987 Agreement and other documents so that the acquisition of the remaining Rytman enterprises could be carried out further. These telephone conversations were in violation of the wire fraud statute, 18 U.S.C. 1343 in that Robert Kofkoff and Joseph Fortin were defrauding the Rytmans and coercing them into transfering their assets and discussed the scheme via interstate wire.

244. The October, 1987 Agreement, signed by Colchester Foods, Inc., Samuel Kofkoff, Robert Kofkoff, Joseph H. Fortin, Kofkoff Egg Farm Limited Partnership, Fitchville Realty, Inc., provided in part that:

(a) The Mill would be sold to Fitchville Realty, Inc. for One Million ($1,000,000.00) Dollars.

(b) CNB would immediately institute foreclosure

proceedings against the real estate of Julius and Dora Rytman, described in Exhibit "C" of the Agreement.

(c) Fitchville Realty, Inc. would purchase all of the real estate in Exhibit "C" for the prices set forth therein.

(d) CNB sold to Colchester Foods, the Egg Commission Contract for Two Hundred Thousand ($200,000.00) Dollars, even though at that time there was substantial money past due on said contract and that the future payments on said contract were at least $1.4 million dollars.

(e) If CNB would obtain the properties by strict foreclosure then CNB would quit claim said properties to Fitchville Realty, Inc. for the prices set forth in Exhibit "C".

(f) In the event that the foreclosure was by sale, then Fitchville Realty, Inc. agreed to bid not less than the amount listed in

Exhibit "C".

(g) Other terms set forth in the October 1987 Agreement are set forth in Exhibit "A", attached hereto and made part hereof.

(h) Upon information and belief, Fitchville Realty, Inc. received a certain piece of property for no consideration.

(i) Upon information and belief, Fitchville Realty, Inc. received parts and tools for no consideration.

245. The October 1987 Agreement was entered into so that CNB could acquire title to the remaining Rytman properties within the shortest period of time. The Connecticut National Bank v. Julius Rytman, Et Al action was one of the proceedings agreed to in the agreement to allow CNB to acquire title in the shortest period of time.

246. Also, a document, dated October 28, 1987, and signed by CNB, Fitchville Realty, Inc., Colchester Foods, Joseph Fortin, Robert Kofkoff, The Norwich Savings Society, The Federal Land Bank, the

Rytmans and their corporations, provided that Rytmans would transfer to Fitchville Realty, Inc., the properties known as Putnam Industrial Land and Putnam Residential Land, for $400,000.00 and $50,000.00 respectively.

247. The Rytmans were not made aware of the fact that the NSS and others had signed and agreed to the October-November 1987 Agreement until October 30, 1987 when they refused to sign. They only signed on the 31st of October 1987 upon the representation that all of the documents would be held in escrow.

IMMEDIATE RESULTS OF THE OCTOBER 1987 AGREEMENT

248. Upon the execution of the October-November 1987 Agreement, CNB proceeded to sell:

(a) the mill;

(b) the Putnam Industrial Land and Residential Land;

(c) the Egg Commission Contract.

These sales took place despite the fact that the Rytmans were told directly that all of the documents

would be held in escrow.

249. The Putnam Industrial Land was sold to Fitchville Realty, Inc. for $400,000.00, even though plaintiffs, Julius and Dora Rytman, had a bona fide purchaser for $500,000.00 causing loss, damage and detriment to the Rytmans.

250. Fitchville Realty, Inc., sold the Putnam Industrial Land to the same person, Julius and Dora Rytman, were going to sell to for $500,000.00 causing loss, damage and detriment to the Rytmans.

251. Unknown to the Rytmans, NSS was insistant that these sales take place so that Federal Land Bank, the first mortgagee of the mill property, would be paid in full, thereby freeing additional funds from the mill for NSS. NSS did not care what the Putnam Industrial Property sold for as long as Federal Land Bank was satisfied.

252. Milton L. Jacobson, Glenn M. Gordon and/or Brown, Jacobson, Jewett and Laudone, P.C., represented to the plaintiffs that the documents they executed on October 31, 1987 were to be held in

escrow and based upon that representation and the advice of Milton L. Jacobson, Glenn M. Gordon and/or Brown, Jacobson, Jewett and Laudone, P.C., the plaintiffs executed the various documents including a release to Samuel Kofkoff, Robert Kofkoff, Joseph H. Fortin, Colchester Foods, Inc., Fitchville Realty, Inc., Egg Express, Inc., Pierce Hollow Farms, Inc., Kofkoff-Fortin Management Associates.

253. Samuel Kofkoff, Robert Kofkoff, Joseph H. Fortin, Colchester Foods, Inc., Kofkoff Egg Farm Limited Partnership and/or Fitchville Realty, Inc., knew and/or through their attorneys should have known that the aforementioned documents were to remain in escrow and/or that the plaintiffs had been told that when they executed the same.

260. The Norwich Savings Society was to receive a certain piece of property, on which it had no mortgage, as payment for its outstanding debt under its participation agreement with defendant, CNB, causing loss, damage and detriment to the Rytmans. This was agreed to between CNB and NSS secretly

because of the ongoing dispute over the CNB decision to enter into the mill without NSS's consent. Rytmans were not aware of this dispute. Attorney Milton L. Jacobson was not only aware of it, but played an active role in assisting the two banks in resolving their differences to the plaintiffs detriment. When Julius Rytman asked Milton L. Jacobson why NSS was looking at his land in Preston, he was falsely and fraudulently advised by Milton L. Jacobson that NSS had a mortgage on that property.

255. CNB knew that the Preston Remaining Land was to go to the NSS once acquired by CNB through the fraudulent and extortionate October-November 1987 Agreement to satisfy CNB's obligation to NSS under the Participation Agreement and concealed that fact from the Rytmans.

256. NSS received $8,079.34 out of the sale of the mill for its legal fees even though Rytman was not obligated to pay them.

257. On October 29, 1987, Attorney Mark Block for the NSS mailed a letter to Thomas Gardiner in

furtherance of the schemeto defraud and extort the Rytmans so as to acquire interest in the Rytman property. The letters inform NSS co-conspirator that it has signed the October 28, 1987 but reserves its rights as a participant under the Participation Agreement of August 8, 1985 including "future distribution of proceeds from future sales of Rytman lands". This letter was in furtherance of the scheme and artifice.That letter was kept secret from the plaintiffs. The NSS was not entitled to any future distribution of any of Rytmans' properties through the Participation Agreement. Instead, the NSS by working together with the co-conspirators devised a secret deal wherein the NSS was to obtain the remaining Rytman land to satisfy (in whole or part) the balance of the money due to it under the Participation Agreement. The oral agreement to defraud was to be reduced to writing as indicated in the October 29, 1987 letter which was sent through the mail is in violation of 18 U.S.C. Sec. 1341.

258. CNB agreed to let The Norwich Savings

Society have the piece of property despite the fact that CNB had a mortgage on said property and despite the fact that The Norwich Savings Society was only entitled to receive payment on its debt through the bankruptcy proceeding involving High Tech Feeds, Inc. causing loss, damage and detriment to the Rytmans.

259. On November 5-17, 1987 CNB took $8,894.07 from the sale of the High Tech mill. The Rytmans were not told that they were going to do this when the Rytmans executed the October-November 1987 Agreement.

260. On November 19, 1987, Brown, Jacobson, Jewett and Laudone, P.C. sent via mail to Mr. Joseph Fortin and Fitchville Realty, Inc. a bill for $9,250.00 for the work that the law firm did in assisting Kofkoff/Fitchville Realty and the other Kofkoff business entities in acquiring the Rytman properties.

261. On November 24, 1987, Milton L. Jacobson sent a letter via the mails to Mr. Clint Charter of Production Credit Association for the purpose of

arranging for the assignment of a mortgage with an approximate balance of $39,747.97 held by the Federal Land Bank to Milton L. Jacobson for "the substantial fees that the Rytmans owe to this [BJJ&L] office for legal services performed during the last year and a half". BJJ&L used the mails to secure their fees for their participation in the acquisition of the Rytmans' properties by Kofkoff/Fitchville Realty, Inc.

262. Milton L. Jacobson, Glenn Gordon and Brown, Jacobson, Jewett and Laudone, P.C. n/k/a Brown, Jacobson, Tillinghast, Lahan & King, P.C. by means of the fraudulent conduct and extortionate conduct benefited to the extent of receiving fees paid by the Colchester Foods/Kofkoff defendants to the extent that they billed the Rytmans for their services and actually received an assignment in November of 1987 in a mortgage that was the property of the Rytmans for $40,000.00 (which arrangement was cancelled some time after the Rytmans discovered the fraudulent and extortionate activities participated in by the

attorneys). Milton L. Jacobson used the mails with the specific intent for himself and his law firm, Brown, Jacobson, Jewett and Laudone, P.C., to get paid by notifying Federal Land Bank of Springfield of the assignment in a letter mailed on November 27, 1987.

263. Glenn Gordon in furtherance of the scheme and artifice to defraud the Rytmans sent letters via mail to other lienholders on the various Rytman properties in an effort to obtain releases for these liens without satisfying Rytmans' obligation for said liens to facilitate the execution of the October-November 1987 Agreement and the acquisition of the Rytman properties by Samuel Kofkoff, Robert Kofkoff, Joseph Fortin corporation, Fitchville Realty, Inc.

264. Milton L. Jacobson, Glenn Gordon and Brown, Jacobson, Jewett and Laudone, P.C. knew that the Preston Remaining Land was to go to the NSS (in fact, Glenn Gordon testified to this fact) once acquired by CNB through the fraudulent and extortionate

October-November 1987 Agreement to satisfy CNB's obligation to NSS under the Participation Agreement and concealed that fact from the Rytmans.

COMMENCEMENT OF THE FORECLOSURE ACTION

265. On November 6, 1987 CNB instituted a foreclosure action pursuant to the October-November 1987 Agreement. Despite the fact that this foreclosure action which is entitled The Connecticut National Bank v. Julius Rytman, Et Al, Docket No. CV-87-0505741S of the Judicial District of New London at New London (hereinafter "CNB v. Rytman") was brought pursuant to the October - November 1987 Agreement with CNB's full knowledge of that fact and yet CNB alleged:

a) The Rytmans defaulted on the Obligations by failing to make the required scheduled interest payments.

b) As a result of, and following, the Rytmans' defaults, CNB exercised its rights and declared the entire balances due and owing under the Obligations immediately due

and payable.

266. CNB did not start the foreclosure on the basis of the alleged default but instead instituted CNB v. Rytman based upon the October - November 1987 Agreement. CNB pled the default described in paragraphs 3 and 4 above to conceal the scheme and artifice and the scheme and artifice of the defendants described herein so that CNB, through the foreclosure, could acquire the remaining Rytman enterprises or what was left to the Rytman enterprises or property thereof and then convey those properties to Fitchville Realty, Inc.

CNB'S CONVERSION OF ESCROW FUNDS

267. On November 18, 1987 Attorney Milton L. Jacobson wrote directly to CNB's attorney, William Barnett of Hoberman and Pollack, P.C., and asked him directly for an accounting of certain money for the removal of manure from the Rytman farm that had been escrowed by the Rytmans through coersion and extortion. William Barnett took the letter received from Attorney Jacobson and sent it through the mail

to Thomas Gardiner, Vice President at CNB, with a letter asking Mr. Gardiner to call him when he had reviewed it. This letter was mailed on November 20, 1987 in violation of 18 U.S.C. Sec. 1341..

268. On November 20, 1987, William Barnett of Hoberman and Pollack, P.C., on behalf of his client, CNB, sent via the mail a letter to Milton L. Jacobson indicating that he would discuss the escrow funds with CNB and get back to him.

269. On or about January 1988 and times prior and subsequent thereto, CNB denied the existence and availability of funds that were escrowed under coercion and/or extortion by the Rytmans. CNB's through it's attorneys made the following representations to public officials at the Department of Agriculture, inter alia:

a) January 14, 1988, William Barnett of Hoberman and Pollack, P.C. in a telephone conversation with William Harrington of the Department of Agriculture who inquired about the

$50,000.00 that the Rytmans had escrowed for manure removal. William Barnett told Mr. Harrington that "there's no removal funds, and the $16,000 paid to have manure removed from Hilltop was not paid by Conn. National".

b) January 25, 1988, Lee Spielman of Hoberman and Pollack, P.C. in a telephone conversation with William Harrington of the Department of Agriculture, Lee Spielman told Mr. Harrington directly: There is no money for cleaning out manure. The money that was held back was to protect the Land Bank and Conn. National against an environmental problem in the future.

Spielman said that Dora and Julius own that farm.

The bank does not appreciate the timing of the calls from Vinny [then Deputy Commissioner of Department of

Agriculture]. He said they seem to come at a crucial time in their negotiations with Rytman and Kofkoff.

He suggested I contact Rytmans lawyer.

c) On February 1, 1988, Mr. Harrington talked via phone to Lee Spielman relative to the clean up money for Hilltop. In this conversation, Lee Spielman stated:

He talked with Jacobson, Said Conn. Nat. would add to Rytman's loan and lower manure level in coop #1.

This representation was made despite the fact that the Connecticut National Bank had the escrow funds to complete the clean up.

The conduct of CNB resulted in a Franklin Department of Health action and a State of Connecticut Department of Environmental Protection action relative to the manure still remaining at the

Hilltop Farm in 1990. The Rytmans had to defend these actions and were subject to press coverage that further caused coersion on the part of CNB to make them consider not to go forward with their defense to the CNB v. Rytman matter and their counterclaims and cross complaints brought therein.

270. Said funds were, in part, a portion of the proceeds derived from the distressed sale of the Schwartz Farm referenced above.

271. Said funds were more than adequate to cover the costs to correct the problems on said farms.

272. The Connecticut National Bank, failed to use said funds to correct said problems and/or converted the funds to The Connecticut National Bank's own use causing loss, damage and detriment to the Rytmans.

273. As a result of the failure of CNB to use said funds as indicated above, Julius Rytman and Dora Rytman, have been subjected to actions by

governmental agencies for the clean-up and/or have been subjected to adverse publicity and public ridicule causing loss, damage and detriment to the Rytmans.

274. The manure that was to be cleaned out of the Hilltop Farm was contained in egg production buildings located on that farm.

275. In January 1990 the building burned exposing the manure to rain and snow creating in the eyes of the Health Director of the Town of Franklin a public nuisance resulting in the issuance of an Abatement Order resulting in the Rytmans receiving

negative publicity and expending money to defend the abatement order and take an appeal therefrom.

276. The Rytmans requested of the defendant, CNB, the funds which they escrowed pursuant to the Environmental Escrow Agreement and CNB refused to provide them with any of the money until the end of the appeal hearing day when the hearing officer from the Department of Health indicated to the Town of

Franklin that it should issue abatement orders to CNB, Colchester Food, Inc., Samuel Kofkoff, Robert Kofkoff and Joseph Fortin.

277. The funds provided by CNB were inadequate to eliminate the manure in 1990 (although there were more than enough funds to remove all of the manure in 1987) and the Department of Environmental Protection issued a cease and desist order which the Rytmans had to defend all to their loss and detriment.

NSS PROCEEDS TO ACQUIRE LAND OF PLAINTIFFS PURSUANT TO SECRET DEAL

278. On November 30, 1987 Daniel Dennis, President of the Norwich Savings Society, mailed a letter to Thomas Gardiner, Vice President of CNB concerning the Rytman home farm. This letter refers to the fraudulent concealed agreement between CNB and NSS relative to the fact that NSS was to get the remaining Rytman land. The letter specifically states:

> "Please review these [maps and letters from surveyor] at your earliest convenience and give me a call so that we can gree on our position and have a conference call with

Attorney Jacobson."

Emphasis added.

This letter was mailed to assist in the implementation of the fraudulently concealed agreement and the October-November 1987 Agreement.

MILTON L. JACOBSON CONTINUES TO CONTROL THE PLAINTIFFS AFTER NOVEMBER 2, 1987.

279. At a barmitzvah on December 19, 1987, Milton L. Jacobson told Dora Rytman not to do anything relative to the October-November 1987 Agreement until she had talked to him. Milton L. Jacobson told her not to listen to Julius Rytman or rely on Julius Rytman and indicated to her that Julius Rytman wascrazy. Milton L. Jacobson told Dora Rytman that he was going to Florida and she was not to do anything until she talked to Milton L. Jacobson. Milton L. Jacobson asked her if she knew his telephone number in Florida. As a result of that conversation, Dora Rytman, following Milton L. Jacobson's advice and request, called Milton L. Jacobson in Florida from Connecticut on or about

January 2, 1988. The phone call was made in the morning around 9:00 a.m. or 10:00 a.m. She started telling him that she needed to meet about their properties and that terms of the October-November 1987 Agreement and they were not satisfied with it. Milton L. Jacobson hung up and then called Dora Rytman back on the phone from Florida on the same day about an hour later. Milton L. Jacobson said to Dora Rytman that she should not do anything to upset the October-November 1987 Agreement. Milton L. Jacobson said he was coming home and set a meeting for Monday or Tuesday evening.

280. On January 5, 1988, the meeting that was arranged via telephone from Florida took place at Milton L. Jacobson's office in Norwich, Connecticut. At the meeting, Milton L. Jacobson told the Rytmans that they had a case against the Kofkoffs but he was not going to do anything about it. Milton L. Jacobson told the Rytmans not to engage Attorney Donald Beebe because Mr. Beebe would not do anything for them and if the Rytmans were set on suing the

Kofkoffs. He would arrange for them to hire Attorney Ralph Dupont. Dora Rytman said to him that she did not feel that it was right that the Rytmans had to turn everything over to the Kofkoffs.

EXTORTIONATE THREATS MADE TO THE PLAINTIFFS TO PREVENT THEM FROM CHALLENGING THE OCTOBER AGREEMENT AND FORCLOSURE BROUGHT PURSUANT TO IT

281. On January 19, 1988, the Rytmans filed a Motion to Dismiss in the CNB V. RYTMAN matter thereby formally interposing a defense to that action. Immediately thereafter, on January 21, 1988, Milton L. Jacobson of Brown, Jacobson, Jewett and Laudone, P.C. sent letters via the mail to the Rytmans in an effort to stop the Rytmans from asserting any defenses and to further coerce and extort them into adhering to the scheme or artifice to acquire the Rytmans' property, property rights and business opportunities from them.

282. On January 22, 1988, Milton L. Jacobson called Mollie Grossman, daughter of the plaintiffs, by telephone from Connecticut to New York to enlist

her help to convince the Rytmans not to challenge the October - November 1987 Agreement. Through this call, Milton L. Jacobson accomplished the following in the furtherance of the scheme or artifice to acquire the Rytmans' property, property rights and business opportunities. Milton L. Jacobson convinced her to drive from New York to Connecticut to meet with him through this telephone call. Milton L. Jacobson, at the meeting that was set up via the telephone call, told Mollie Grossman that she should do her best to convince the Rytmans not to challenge the October - November 1987 Agreement. Milton L. Jacobson described to Mollie Grossman the October - November 1987 Agreement as the best course for the Rytmans. Milton L. Jacobson told Mollie Grossman that the Rytmans were acting in a self-destructive manner by challenging the October - November 1987 Agreement, that things could go worse for the Rytmans and that the Rytmans did not know how bad things could get for them if the Rytmans challenged the October - November 1987 Agreement and the schemes

associated therewith. Milton L. Jacobson told Mollie Grossman that he wanted the Rytmans to come immediately to his office to sign documents to finalize the acquisition of all the Rytman property. Milton L. Jacobson also told Mollie Grossman if the Rytmans could not come immediately, then they should meet with Glenn Gordon the next day.

Milton L. Jacobson directed Mollie Grossman to go to her parents and convince them to finalize the October - November 1987 Agreement part of the scheme or artifice. Mollie Grossman listened to what Milton L. Jacobson said and believed him and went to her parents to try and convince them to finalize the October - November 1987 Agreement.

283. Milton L. Jacobson requested Ben Krowicki of Hoberman and Pollack, P.C., (Connecticut National Bank's attorneys) on behalf of CNB to send a letter to the Rytmans in furtherance of the scheme and artifice to further coerce and extort the Rytmans into not challenging the scheme or artifice so that the Rytmans would be defrauded of their property.

property rights and business opportunities. Ben Krowicki of Hoberman and Pollack, P.C., sent, on a letter January 25, 1988, reminding the Rytmans that CNB v. Rytman foreclosure action was brought pursuant to the October-November 1987 Agreement and telling them that because the Rytmans were asserting their legal rights in the foreclosure action, they would lose rights to their home of forty years. Said letter stated:

> (i) that the foreclosure described in paragraph (a) was brought pursuant to the October Agreement.
>
> (ii) that said October Agreement provided that Julius Rytman, Dora Rytman, Rytman Grain, Inc., Agri-Finance, Inc., Julius and Dora Rytman, A Proprietorship, Colchester Egg Farms, Inc. and Pinecrest Duck Farm Trust, agreed pursuant to paragraph 4:
>
> "[A]ll parties to this Agreement agree to provide Bank with their full

cooperation and take such action as may be necessary to insure the acquiring of title to said property by Bank within the shortest possible time." (Emphasis added.)

(iii) that since the Rytmans filed a Motion to Dismiss to the foreclosure action that CNB disclaims any obligation it may have had to convey certain property to the Rytmans.

284. Ben Krowicki on behalf of CNB sent copies of the January 25, 1988 letter via mail to Thomas Gardiner, Vice President of CNB, Milton L. Jacobson and Glenn Gordon. These mailings were in violation of 18 U.S.C. 1341 in that the letter to the Rytmans was an attempt to coerce them into going forward with the agreement under the threat of losing their home.

285. In January, February and March 1988, CNB, through its employees or through its attorneys at Hoberman and Pollack, P.C., called from Connecticut to West Hampton, Massachusetts, to discuss the

development of the Rytman enterprise property located there. CNB controlled this property through its mortgage on the same and through oral agreements made at the time of the execution of the October - November 1987 Agreement. This call was in violation of 18 U.S.C. 1341 in that CNB was trying to develop this property so that it could satisfy NSS and end its dispute with NSS.

BROWN, JACOBSON, JEWETT AND LAUDONE FORWARD PLAINTIFFS" RELEASE TO KOFKOFF TO FURTHER THE CAUSE OF KOFKOFF

286. In 1989 Glenn Gordon, Milton L. Jacobson and/or Brown, Jacobson, Jewett and Laudone, P.C. forwarded on to the Colchester Foods, Inc., Samuel Kofkoff, Robert Kofkoff, Joseph H. Fortin, Kofkoff Egg Farms Limited Partnership and Fitchville Realty, Inc.'s new counsel via the mail a release from the Rytmans in an attempt to assist Colchester Foods, Inc., Samuel Kofkoff, Robert Kofkoff, Joseph H. Fortin, Kofkoff Egg Farms Limited Partnership and Fitchville Realty, Inc., in defrauding the Rytmans

and/or in an attempt to assist Colchester Foods, Inc., Samuel Kofkoff, Robert Kofkoff, Joseph H. Fortin, Kofkoff Egg Farms Limited Partnership and Fitchville Realty, Inc., in attempting to defraud the Rytmans' present claims against the Colchester Foods, Inc., Samuel Kofkoff, Robert Kofkoff, Joseph H.Fortin, Kofkoff Egg Farms Limited Partnership and Fitchville Realty, Inc. causing loss, damage and detriment to the Rytmans

287. Attorney Glenn Gordon of Brown, Jacobson, Jewett and Laudone, P.C. used the mails with the specific intent of defrauding one of his firm's own clients of the precise interest which it had been retained to defend (one of which was to hold this and other operative documents in escrow). This mailing after release was concelaed from the plaintiffs.

SUMMATION OF THE ALLEGATIONS MADE HEREIN

288. This amended complaint alleges, inter alia, violations under Racketeer Influenced and Corrupt Organizations (RICO), 18 U.S.C. 1962 et seq. and is brought by the plaintiffs in connection with a scheme

devised, conducted and/or participated in by defendants, Kofkoff Egg Farms Limited Partnership, Samuel Kofkoff, Robert Kofkoff and Joseph H. Fortin, Blair Hagy, Colchester Foods, Inc., Fitchville Realty, Inc., Pierce Hollow Farms, Inc., Connecticut National Bank, Norwich Savings Society, Brown, Jacobson, Jewett & Laudone, P.C., Milton L. Jacobson and Glenn Gordon, each of whom was associated with or controlled or participated in the affairs of the plaintiffs' enterprise through a pattern of racketeering activity, and conspired to do so, and wrongfully and unlawfully divert assets of the plaintiffs' enterprise, and conspire to do so, all to the detriment of the plaintiffs' enterprise.

289. As a result of the conduct of the defendants, the plaintiffs lost their entire livelihood, their assets, their ability to maintain an egg production business, grain mill business, grain sales business, chicken farm business and the businesses ancillary thereto. The loss of assets

include, but are note limited to, an integrated grain mill facility, several chicken farms (which had values as land and as opertaing farms), the loss of chickens, the loss of personal property, the loss of valuable developable properties, and the loss from valuable contracts, accounts receivable and intangibles.

Julius Rytman and Dora Rytman as owner of their business entities and as sole stockholder and through their special relationship with the defendants relative to High Tech Feeds, Inc. and High Tech Feeds, Inc.'s special arrangement with the plaintiffs of High Tech Feed, Inc. lost their entire integrated chicken farm and egg production business and grain mill business. Julius Rytman and Dora Rytman personally have suffered emotional distress. Julius Rytman, Dora Rytman, Julius and Dora Rytman Proprietorship, Rytman Grain, Inc., Pinecrest Duck Farm Trust, Agri-Finance, Inc. as guarantors, cross collateralizers and "signatories" of various financial contracts lost valuable collateral, the

businesses operating that collateral through the conduct described herein.

290. Defendants agreed, in 1987, that they would conspire together to affect the liquidation of the plaintiffs and transfer these assets to the defendants, Colchester Foods, Fitchville Realty, Joseph Fortin, Robert Kofkoff, Samuel Kofkoff, Kofkoff Egg Farm Limited Partnership, and Pierce Hollow Farms, Inc. This common scheme culminated with the signing of the October 1987 Agreement which, as detailed herin, provided for such liquidation. During the relevant times referred to in this complaint, the defendants conspired with one another to defraud the plaintiffs of their assets and to divert unlawfully those assets to the benefit of themselves, who as a result of their unlawful conduct, had no lawful right to those assets. The racketeering activities through which these objections were carried out consisted of a complex pattern of individual transactions and groups of transactions as more fully described herein.

291. CNB agreed to participate in the conspiracy because, as detailed in this complaint, it had been operating under a secret plan of liquidating the plaintiffs since 1985 and, in 1987, decided it was significantly to their advantage to assist its other borrowers, the Kofkoffs, in obtaining assets of the plaintiffs, thereby finalizing its liquidation of the plaintiffs and gaining more security on its loans with Kofkoff.

292. Kofkoff agreed to participate in the conspiracy because, as detailed in this complaint, they had already defrauded and extorted the plaintiffs out of millions of chickens and with the acquisition of the remaining assets of the plaintiffs, they would become an integrated business and one of the largest egg production and distibution businesses in the region. They agreed to participate in the conspiracy because it enabled them to acquire these assets at below market prices.

293. Norwich Savings Society agreed to participate in the conspiracy because, with the

wholesale liquidation of the plaintiffs' assets, they would be paid significantly more on the debt owed to them than they would have otherwise. Norwich Savings Society participated partially by threatening legal action against CNB if Norwich Savings Society was not given monies from the sale of plaintiffs' properties beyond the sale of the grain mill.

294. The center of the conspiracy was Milton L. Jacobson, Glenn Gordon and Brown, Jacobson, Jewett and Laudone, P.C. who, ats detailed herein, represented the Kofkoff group in the acquisition of plaintiffs' assets. At the same time, they purported to represent the plaintiffs. Their representation of the plaintiffs, detailed herein, was fraudulent and was, in fact, the instrumental role in the destruction of the plaintiffs.

295. It was a part of the scheme to defraud that the defendants, Brown, Jacobson, Jewett, and Laudone, P.C., Milton L. Jacobson and Glenn Gordon would and did agree and conspired together with the other defendants to devise and participate in a plan of

deceit and deception, whereby they abused their positions of trust and fiduciary relationships with the plaintiffs and their enterprise; they abused and breached their obligations of loyalty and fidelity and their duty to act honestly and faithfully in the best interests of the plaintiffs and their enterprise. Instead, they acted for the best interests of the other defendants which interests were adverse to the plaintiffs and the plaintiffs' enterprise. They used false and fraudulent pretenses, representations and promises calculated to deceive the plaintiffs and made material nondisclosures and concealment of facts and information important to the plaintiffs while representing the plaintiffs, all so as to unlawfully, intentionally and/or wilfully, and with intent to defraud the plaintiffs by diverting their assets to the other defendants and destroying the businesses. The above acts by Milton L. Jacobson, Glenn Gordon and Brown, Jacobson, Jewett & Laudone, P.C. included but were not limited to Milton L. Jacobson, Glenn

Gordon and Brown, Jacobson, Jewett & Laudone, P.C. simultaneous legal representation of the Kofkoff defendants and the plaintiffs in matters directly involving both the Kofkoff defendants and the plaintiffs to the their enterprise's detriment. The above acts by Milton L. Jacobson, Glenn Gordon, and Brown, Jacobson, Jewett & Laudone P.C. included but were not limited to simultaneous legal representation of Norwich Savings Society and Connecticut National Bank during the period of time they represented the plaintiffs and the Kofkoff defendants.

The above acts of Brown, Jacobson, Jewett and Laudone, P.C. included but were not limited to the simultaneous act principals of Brown, Jacobson, Jewett and Laudone, P.C. sitting as directors on the Norwich Savings Society Board of Directors, making business decisions relative to the plaintffs' enterprise involving the participation loan (High Tech Feed) between Norwich Savings Society and CNB; the Dydo'Lisbon estate loand matter, the Spandorf personal mortgage matter and said plaintiffs in these

same matters. The above acts by Milton L. Jacobson, Glenn Gordon and Brown, Jacobson, Jewett and Laudone, P.C. included but were not limited to Milton L. Jacobson, Glenn Gordon and Brown, Jacobson, Jewett and Laudone, P.C.'s simultaneous legal representation of the Norwich Community Development Corporation and the plaintiffs relative to land transactions affecting both both the plaintiffs' and the Norwich Community Development Corporation.

296. That scheme to defraud evolved over time as a pattern of racketeering activities, described herein, that inflicted particular harm on the plaintiffs' enterprise business and property.

297. In carrying out the scheme to defraud the plaintiffs, the defendants engaged, inter alia, in conduct in violation of Federal laws, to wit: mail fraud in violation of 18 U.S.C. Sec. 1343; and extortion in violation of 18 U.S.C. Sec. 1951 et seq.

298. In carrying out the scheme to defraud the plaintiffs, the defendants also engaged, inter alia, in conduct in violation of the laws of the State of

Connecticut, to wit: larceny in violation of Connecticut General Statutes Sec. 53a-119, et seq.

299. The defendants committed numerous acts constituting violations of 18 U.S.C. Sec. 1341 by placing or causing to be placed in the U.S. mails letters, agreements and other documents throughout the period of time detailed in the complaint, which contained information concealed from the plaintiffs' affecting plaintiffs' ability to stop the fraudulent acts, false information regarding monies allegedly owed by the plaintiffs to the various defendants, false information concerning environmental problems on plaintiffs properties, fraudulent information relating to the false promises made throughout ~~this~~ time by the defendants, false and fraudulent information regarding the values and liquidation of the assets of the plaintiffs; and other written documents which contained materially false and fraudulent statements in furtherance of the scheme.

300. As outlined in the complaint, interstate phone calls were made in furtherance of the scheme in

violation of 18 U.S.C. Sec. 1343.

301. As a result of the defendants conduct, as alleged herein, the plaintiffs were injured by the destruction of the enterprise and the immediate loss of assets described herein. Further, the plaintiffs lost the ability to prevent the destruction of the businesses described herein and the ability to prevent the foreclosure of other properties owned by the plaintiffs since the October 1987 Agreement.

302. Plaintiffs suffered damages as a result of defendants conduct in an amount to be determined at trial.

303. Pursuant to 18 U.S.C. Sec. 1964(c), plaintiffs are entitled to recover treble their general and special compensatory damages, plus interest, costs and attorneys fees by reason of defendants' violations of 18 U.S.C. 1962.

COUNT TWO

Paragraphs 1 through 303 of Count One are incorporated herein as paragraphs 1 through 303 of this Count Two.

304. The defendants each had knowledge of the illegal operation of the enterprise(s) and lent substantial assistance to the other defendants to enable them to associate themselves with the enterprises to conduct and participate in the affairs of the enterprise(s) through a pattern of racketeering activity in violation of 18 U.S.C. Sec. 1962 et. seq.

305. By reason of the aforementioned racketeering enterprise activities and the aiding and abetting of such racketeering enterprise activities, defendants' ability to defraud the plaintiffs was immeasurably enhanced because the illegal operation of the enterprises and the aiding and abetting of the illegal operation of the enterprises facilitated the fraud and/or wrongdoings and aided its concealment, thereby damaging the plaintiffs in its business and property.

306. As a result of the defendants conduct, as alleged herein, the plaintffs were injured by the destruction of the enterprise and the immediate lost

of assets described herein. Further, the plaintiffs lost the ability to prevent the destruction of the enterprise described herein and the ability to prevent the foreclosure of other properties owned by the plaintiffs since the October 1987 Agreement.

307. Plaintiffs suffered damages as a result of defendants conduct in an amount to be determined at trial.

308. Pursuant to 18 U.S.C. Sec. 1964(c), plaintiffs are entitled to recover treble their general and special compensatory damages, plus interest, costs and attorneys fees by reason of defendants' violations of 18 U.S.C. 1962.

COUNT THREE

Paragraph 1 through 303 of Count One are incorporated herein as paragraphs 1 through 303 of this Count Three.

304. The defendants knowingly, willfully, and unlawfully did conspire, agree, and combine together with each other to associate with, conduct, participate in, commit or to assist in the commission

of at least two of the predicate acts set forth herein and further the scheme to defraud the enterprises through a pattern of racketeering activity in violation of 18 U.S.C. Sec. 1962 et. seq. and such conspiracy is unlawful and violates 18 U.S.C. Sec. 1962(d).

305. The object of the conspiracy was to associate with, participate in, and conduct the affairs of the enterprises, and/or to acquire or maintain directly or indirectly an interest in or control of the enterprise(s), in part, by the acts described herein.

306. The overt acts committed by defendants to execute and accomplishy the above-described unlawful conspiracy include but are not limited to the illegal predicate acts set forth in above, which constitute a pattern of racketeering activity as defined in 18 U.S.C. Sec. 1961(5).

307. By reason of the above-described unlawful conspiracy, defendants' ability to defraud the plaintiffs was immeasurably enhanced because the

illegal operation of the enterprises through this conspiracy facilitated the fraud and aided its concealment, thereby damaging the plaintiffs in their business and property.

308. As a result of the defendants conduct, as alleged herein, the plaintiffs were injured by the destruction of the enterprise and the immediatef loss of assets described herein. Further, the plaintiffs lost the ability to prevent the destruction of the enterprise described herein and the ability to prevent the foreclosure of other properties owned by the plaintiffs since the October 1987 Agreement.

309. Plaintiffs suffered damages as a result of defendants conduct in an amount to be determined at trial.

310. Pursuant to 18 U.S.C. Sec. 1964(c), plaintiffs are entitled to recover treble their general and special compensatory damages, plus interest, costs and attorneys fees by reason of defendants' violations of 18 U.S.C. 1962.

WHEREFORE, plaintiffs demand judgment as follows:

1) For the First, Second, and Third Causes of Action, damages in an amount to be determined at trial plus interest and costs;

2) For the First, Second, and Third Causes of Action, treble damages under 18 U.S.C. sec. 1964(c), as well as costs of the suit and reasonable attorney's fees;

3) Punitive damages in an amount to be determined at trial;

4) Such other and further relief as the Court may deem just and proper, together with interest, along with the costs and disbursements of this action.

Dated: September 23, 1992

THE PLAINTIFFS

By: /s/ Donald R. Beebe

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Supreme Court, U.S.
FILED
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No. 93-766

IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

JULIUS RYTMAN, DORA RYTMAN, COLCHESTER EGG FARMS, INC., RYTMAN GRAIN, INC., JULIUS and DORA RYTMAN PROPRIETORSHIP, PINECREST DUCK FARM TRUST, and AGRI-FINANCE, INC.,

Petitioners,

v.

KOFKOFF EGG FARM LIMITED PARTNERSHIP, SAMUEL KOFKOFF, ROBERT KOFKOFF, JOSEPH FORTIN, BLAIR HAGY, COLCHESTER FOODS, INC., PIERCE HOLLOW FARMS, FITCHVILLE REALTY, INC., THE CONNECTICUT NATIONAL BANK, NORWICH SAVINGS SOCIETY, BROWN, JACOBSON, JEWETT & LAUDONE, P.C. n.k.a. BROWN, JACOBSON, TILLINGHAST, LAHAN & KING, P.C., MILTON JACOBSON, and GLENN GORDON,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit

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QUESTIONS RESTATED

1. Whether a conflict exists as to the appropriate standard of review when determining if an amended complaint should be allowed.
2. Whether the Federal Rules of Civil Procedure apply to a state court complaint removed to federal court.
3. Whether the Second Circuit properly applied *Reves v. Ernst & Young*.
4. Whether bankers are exempt from RICO.
5. Whether the Second Circuit properly found that the petitioners failed to allege the requisite predicate acts under RICO.
6. Whether there is a national debate regarding the threat to enforce legal or contractual rights as the basis for Hobbs Act violations.
7. Whether enforcement of legal or contractual rights constitutes acquisition or maintenance of an interest in, or control of, a borrower's business.
8. Whether the Second Circuit limited its review of petitioners' claims.
9. Whether the Second Circuit properly denied petitioners' request for additional discovery prior to granting summary judgment.

STATEMENT REQUIRED BY RULE 29.1

Respondent, The Connecticut National Bank n/k/a Shawmut Bank Connecticut, N.A., discloses that it is a subsidiary of Shawmut National Corporation, a publicly held corporation that does not have any other corporate parents, subsidiaries, or affiliates which are publicly held.

Respondent, The Norwich Savings Society, is a wholly-owned subsidiary of Norwich Financial Corporation, a registered bank holding company.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

No. 93-766

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Petitioners,

v.

KOFKOFF EGG FARM LIMITED PARTNERSHIP, SAMUEL KOFKOFF, ROBERT KOFKOFF, JOSEPH FORTIN, BLAIR HAGY, COLCHESTER FOODS, INC., PIERCE HOLLOW FARMS, FITCHVILLE REALTY, INC., THE CONNECTICUT NATIONAL BANK, NORWICH SAVINGS SOCIETY, BROWN, JACOBSON, JEWETT & LAUDONE, P.C. n/k/a BROWN, JACOBSON, TILLINGHAST, LAHAN & KING, P.C., MILTON JACOBSON, and GLENN GORDON,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit

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BRIEF FOR RESPONDENTS IN OPPOSITION

STATEMENT OF THE CASE

A. Counterstatement

Petitioners seek review of an unpublished unanimous decision of the Second Circuit Court of Appeals [1] affirm-

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[1] Kearse, C.J., Miner, J., and Pratt, J. (Pet. App. 1).

ing the District Court's [2] fact-specific holding that petitioners' complaint failed to state a claim under the Racketeer Influenced And Corrupt Organization Act (hereinafter "RICO"), 18 U.S.C. § 1962, *et seq.*[3] Despite petitioners' attempt to characterize the Appellate Court's opinion to the contrary, this case does not fulfill any requirement of Supreme Court Rule 10 and does not merit consideration by this Court.

Although respondents vigorously object to petitioners' numerous mischaracterizations of the "facts" in this case, a full discussion of petitioners' use of creative license here would far exceed the scope of this brief. However, respondents are compelled to highlight several glaring misstatements of fact. Specifically, the following statements were never plead below, that: respondent CNB embezzled or converted funds (Pet. 6); respondent Norwich controlled petitioners' enterprises' liquidation (Pet. 7); respondents acquired all of the petitioners' assets (Pet. 7); and, petitioners were solvent and had more than enough assets to pay all of their obligations to Kofkoff, CNB, and Norwich. (Pet. 7).[4]

B. History of the Case

Petitioners in this matter, plaintiffs in the original District Court action, Julius Rytman, Dora Rytman, Colchester Egg Farms, Inc., Rytman Grain, Inc., Julius and Dora Rytman Proprietorship, Pinecrest Duck Farm Trust, and Agri-Finance, Inc. (hereinafter "Rytmans") have requested certiorari in response to the decision of the

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[2] Dorsey, J. (D. Conn.).

[3] *Ruling on Pending Motions*, August 31, 1992. (Pet. App. 13).

[4] It should be noted that despite the fact that both the District and Second Circuit Courts' decisions were based upon petitioners' November 2, 1991 Complaint, petitioners have neglected to include the complaint in their Appendix, instead Rytmans included their September 23, 1992 *proposed* amended complaint ". . . which the district court reviewed and concluded failed to cure the defects in the original complaint." (Pet. App. 7).

Second Circuit Court of Appeals (3-0) dated June 21, 1993 affirming the District Court's *Ruling on Pending Motions* dated August 31, 1992, dismissing Rytmans' RICO claims and granting Summary Judgment to Norwich. Additionally, Rytmans challenge the District Court's November 24, 1992 denial of their Request for Leave to Amend.

Petitioners' RICO complaint identifies thirteen (13) different entities who may be grouped as follows:

1. *Banking Institutions*—The Connecticut National Bank ("CNB") and The Norwich Savings Society ("Norwich");
2. *Attorneys*—Milton L. Jacobson, Esq., Glenn M. Gordon, Esq., and the law firm of Brown, Jacobson, Jewett & Laudone ("Brown Jacobson"); and
3. *Poultry Business Competitors*—Kofkoff Egg Farm Limited Partnership, Samuel Kofkoff, Robert Kofkoff, Joseph Fortin, Blair Hagy, Colchester Foods, Inc., Pierce Hollow Farms, and Fitchville Realty, Inc. ("Kofkoff").

Respondent CNB is a national banking association which began a lender/borrower relationship with Rytmans and their associated entities in the early 1960's and subsequently loaned millions of dollars to them. Respondent Norwich is also a lending institution whose sole involvement in this matter is based upon an August, 1985, agreement to participate in a CNB loan to High Tech Feeds, Inc., which purchased the Rytman Grain Mill. Rytmans subsequently purchased the stock of the grain operation and assumed the CNB loan personally. The Kofkoff respondents were primarily poultry competitors of Rytmans who, on occasion, extended credit to Rytmans during the course of their business relationship. The Brown Jacobson respondents provided legal representation to Rytmans.

In their complaint, Rytmans admit, that in 1987, they defaulted on their financial obligations to CNB. There-

after, a lengthy work-out ensued which culminated in the negotiation of an agreement dated October 31, 1987.

The RICO Complaint and the factual allegations contained therein are virtually identical to the claims made by Rytmans against the same parties in a case commenced in November, 1987 in the Connecticut Superior Court, Judicial District of New London, captioned *The Connecticut National Bank v. Julius Rytman, et al.,* Docket No. CV-87-0505741 S. There, CNB brought an action to foreclose certain mortgages it holds on Rytmans' properties which were executed and delivered by Rytmans to CNB as security for loans. In response to the CNB foreclosure action, Rytmans filed counterclaims against CNB and cross-claims against Brown Jacobson, Kofkoff, and Norwich seeking relief based upon the same facts as presented in the instant RICO case. In the foreclosure case, Rytmans conducted over one hundred (100) days of depositions of defendants and filed extensive interrogatories and document requests to which answers and responses were provided.

In addition, CNB, Norwich, Brown Jacobson and/or Kofkoff have been sued directly, counterclaimed against, cross-claimed against, and/or impleaded by Rytmans in at least eleven (11) additional actions. In said actions, Rytmans allege virtually the identical fact pattern to this case and seek redress for, *inter alia,* breach of contract, negligence, fraud, conspiracy, breach of fiduciary duty, intentional and negligent infliction of emotional distress, and violations of anti-tying and antitrust statutes.

While Norwich filed a separate brief in opposition with the Second Circuit, Norwich now joins in respondents' brief in opposition in the interest of judicial economy.

C. Procedural History

This appeal arises out of the dismissal of Rytmans complaint served November 13, 1991, returnable to the Connecticut Superior Court, Judicial District of New London.

The complaint sought recovery for alleged violations of RICO.

Norwich, on behalf of all respondents, filed a Notice of Removal dated December 11, 1991. Accordingly, this matter was removed to the United States District Court for the District of Connecticut. On December 12, 1991, the District Court entered an Order requiring Rytmans to set forth the information upon which they relied to initiate their RICO action. In response to this Order, on May 11, 1992, Rytmans filed a "RICO Case Statement."

Commencing on May 26, 1992, and dates thereafter, Brown Jacobson, Kofkoff, and CNB, filed separate motions pursuant to Federal Rules of Civil Procedure (hereinafter "Fed. R. Civ. P.") 12(b)(6) to dismiss the claims against them for failure to state a claim upon which relief could be granted, and for Rytmans' failure to plead fraud with the requisite particularity required under Fed. R. Civ. P. 9(b). On June 3, 1992, Norwich moved for Summary Judgment pursuant to Fed. R. Civ. P. 56.

On August 31, 1992, in its *Ruling on Pending Motions*, the District Court ruled that Rytmans failed to state a cause of action under RICO. The District Court, therefore, dismissed the complaint in its entirety against Brown Jacobson, Kofkoff, and CNB. The Court also granted Norwich's Motion for Summary Judgment. On September 9, 1992, the District Court entered Judgment in favor of all respondents in accordance with its *Ruling on Pending Motions*. (Pet. App. 13).

On September 18, 1992, Rytmans moved for Leave to Amend their complaint. On October 8, 1992, Rytmans filed a Notice of Appeal, which Notice was subsequently withdrawn by stipulation dated November 30, 1992. On November 24, 1992, the District Court denied Rytmans' Request for Leave to Amend. Thereafter, on December 4, 1992, Rytmans moved for reconsideration of the District Court's *Ruling on Pending Motions*.

On February 5, 1993, on Rytmans' motion, the District Court reconsidered and denied Rytmans' Request for Leave to Amend their Complaint and to Set Aside and/or Vacate the September 9, 1992 Judgment.

On December 24, 1992, and February 22, 1993, Rytmans filed their second and third Notices of Appeal with the Court of Appeals which were then consolidated in the Second Circuit on March 11, 1993.

On June 14, 1993, the Second Circuit heard oral argument on Rytmans' appeal and on June 21, 1993, entered its decision unanimously affirming the decisions of the District Court.

On July 1, 1993, Rytmans filed their Petition for Rehearing with a suggestion that it be heard En Banc (sic). On August 10, 1993, that petition was denied. On August 11, 1993, Rytmans filed a Motion for Stay of Mandate which was denied by the Second Circuit on September 13, 1993 and issued as a mandate on September 16, 1993. On November 8, 1993, Rytmans filed their Petition for a Writ of Certiorari with this Court.

REASONS FOR DENYING THE WRIT

This case does not present a conflict with the law in the circuits or with any decisions of this Court. Rather, the District and Second Circuit Courts' decisions challenged by petitioners are in full accord with them. Further, this case does not present an issue of national or special importance.

Pursuant to *Magnum Import Co. v. Coty,* 262 U.S. 159, 163 (1923), the jurisdiction of this Court to review cases by way of certiorari was not conferred merely to give the defeated party another hearing. No type of case is more appropriately applicable to this reasoning than the case at bar. Petitioners merely seek yet another factual review of the District and Second Circuit Courts' decisions. "[A] court of law, such as this Court is, rather

than a court for correction of errors in fact finding, cannot undertake to review concurrent findings of fact by two courts below in the absence of a very obvious and exceptional show of error." *Graver Tank & Mfg. Co. v. Linde Co.,* 336 U.S. 271, 275 (1949). No such showing has been made. Moreover, this Court has held that: "[w]e do not grant a certiorari to review evidence and discuss specific facts." *United States v. Johnston,* 268 U.S. 220, 227 (1925). As discussed below, no further review of this case is warranted.

I. WHETHER A CONFLICT EXISTS AS TO THE APPROPRIATE STANDARD OF REVIEW WHEN DETERMINING IF AN AMENDED COMPLAINT SHOULD BE ALLOWED

Petitioners assert that the test, applied by the Second Circuit in determining whether an amended complaint should be allowed, is in conflict with the other circuits. (Pet. 10). No such conflict exists.

As noted above, on August 31, 1992, the District Court dismissed petitioners' November 2, 1991, complaint. Petitioners finally requested Leave to Amend their Complaint on September 18, 1992, which the District Court denied on February 5, 1993.

As this Court stated in *Foman v. Davis,* 371 U.S. 178 (1962), ". . . outright refusal to grant the leave without any justifying reason appearing for the denial is not an exercise of discretion; it is merely abuse of that discretion and inconsistent with the spirit of the Federal Rules," *Id.* at 182, *however,* ". . . the grant or denial of an opportunity to amend is within the discretion of the District Court." *Id.* This Court also held that such reasons as: "futility of amendment"; "undue prejudice to the opposing party"; "repeated failure to cure deficiencies by amendments previously allowed"; and "undue delay" were sufficient reasons to deny leave to amend. *Id.*

In this case, both the District and Second Circuit Courts have followed the holding in *Foman*. The District Court noted that "plaintiffs have failed to demonstrate that leave to amend is warranted under Fed. R. Civ. P. 15(a). The proposed amended complaint merely repeats, at greater length, the legal and factual allegations contained in the initial complaint, and hence fails to remedy the deficiencies prompting judgment for the defendants." (Pet. App. 23). The Second Circuit, after reciting the standard in *Foman*, as well as the standards in *Health-Cem Corp. v. Baker*, 915 F.2d 805, 810 (2d Cir. 1990) (no merit in proposed amendments) and *Prezzi v. Schelter*, 469 F.2d 691, 692 (2d Cir. 1972) (per curium), *cert. denied*, 411 U.S. 925 (1973) (successive pleadings remained prolix and intelligible), held that "here, [petitioners] submitted to the Court a proposed amended complaint, consisting of 121 pages (hardly the 'short and plain' or 'simple, concise, and direct' statement that Fed. R. Civ. P. 8(a) and (e) required)", which the District Court reviewed and concluded failed to cure the defects in the original complaint. The Second Circuit held that "[t]his evaluation, and the conclusion that the proposed amendment would not be productive, did not constitute an abuse of discretion." (Pet. App. 7).

Petitioners claim that the Second Circuit's review process is in conflict with other circuits and point to *Gaubert v. Federal Home Loan Bank Board*, 863 F.2d 59, 68 (D.C. Cir. 1988); *Dussouy v. Gulf Coast Investment Corp.*, 660 F.2d 594, 598 (5th Cir. 1981); and *Nolin v. Douglas County*, 903 F.2d 1546, 1550 (11th Cir. 1990) as authority. (Pet. 13). Their position is unfounded. The *Gaubert*, *Dussouy* and *Nolin* decisions all adhere and in fact cite to this Court's ruling in *Foman* that "the grant or denial of an opportunity to amend is within the discretion of the District Court." *Id.* at 182; *Gaubert* at 69; *Dussouy* at 597; *Nolin* at 1550. Simply put, there is no conflict among the circuits as to the standard of review.

Petitioners reliance on *Vild v. Visconsi,* 956 F.2d 560 (6th Cir. 1992), *cert. denied,* —— U.S. ——, 113 S. Ct. 99 (1993) is misplaced. The District and Second Circuit Courts followed the standard enunciated in *Foman,* which remains controlling.

II. WHETHER THE FEDERAL RULES OF CIVIL PROCEDURE APPLY TO A STATE COURT COMPLAINT REMOVED TO FEDERAL COURT

Contrary to petitioners' claims, the Federal Rules of Civil Procedure clearly govern civil actions removed to a district court from a state court. *Willy v. Coastal Corporation,* —— U.S. ——, 112 S. Ct. 1076, 1079, *rehearing denied,* 112 S. Ct. 2001 (1992). Furthermore, contrary to petitioners' convoluted reading of Fed. R. Civ. P. 81(c), seeking to require a district court to treat a removed complaint as "deemed adequate when it enters the federal courts . . ." (Pet. 21), Fed. R. Civ. P. 81(c) should be given its plain meaning. *Pavelic & LeFlore v. Marvel Entertainment Group,* 493 U.S. 120 (1989). Under a plain reading of Fed. R. Civ. P. 81(c), once a complaint is removed to a district court, it then becomes subject to the Federal Rules of Civil Procedure.

Once this action was removed to the District Court, petitioners had the opportunity to replead their case if they so desired. (Fed. R. Civ. P. 81(c)). Instead, petitioners chose to stand on their original complaint despite its deficiencies. (Pet. App. 4). Only after the District Court ruled that Rytmans' complaint failed to state a cause of action under RICO, and judgment had entered (approximately four (4) months after the first motion to dismiss was filed), did Rytmans ever move for Leave to Amend their Complaint. Thereafter, the District Court held that petitioners' Proposed Amended Complaint failed to cure the deficiencies of their original complaint. (Pet. App. 23). Accordingly, the District Court was correct in holding Rytmans' complaint to the standards of the Fed-

eral Rules of Civil Procedure. Fed. R. Civ. P. 1 ("these rules govern the procedure in the United States district courts in all suits of a civil nature . . . .").

III. WHETHER THE SECOND CIRCUIT PROPERLY APPLIED *REVES v. ERNST & YOUNG*

Petitioners claim that there is a "direct conflict between the holding in *Reves v. Ernst & Young*, —— U.S. ——, 113 S. Ct. 1163 (1993) and the Second Circuit's holding in this case." (Pet. 24). No such conflict exists as the Second Circuit, in affirming the District Court's *Ruling on Pending Motions* (Pet. App. 13), did not interpret *Reves* nor did it apply *Reves* to any allegations under 18 U.S.C. 1962(b) as Rytmans claim.

Rytmans also claim that their petition should be granted in order to clarify whether *Reves* applies to § 1962(b) in addition to § 1962(c). However, no such clarification is necessary based upon the facts of this case.

Unlike petitioners' characterization of the Second Circuit's June 21, 1993 decision (Pet. 22), the Second Circuit did not hold that respondents did not engage in unlawful conduct under § 1962(b), rather, the Court simply held that "[p]laintiffs failed to come forward with evidence that could support their assertions of unlawful conduct." (Pet. App. 8-9). In its citation of *Reves*, the Second Circuit was careful to use the abbreviation "*c.f.*" prior to the *Reves* citation. Thus, clearly, the Second Circuit referenced *Reves* for a proposition (§ 1962(c) standards) which differs from the proposition proposed by Rytmans (§ 1962(b) standards) but is sufficiently analogous to lend support to that proposition, and in fact supplied a parenthetical to explain the reference. Accordingly, at no time did the Second Circuit hold that *Reves* applied to cases brought under § 1962(b).

As the Second Circuit did not base any of its decisions on whether *Reves* applies to § 1962(b) issues, no conflict exists between this Court and the Second Circuit.

IV. WHETHER BANKERS ARE EXEMPT FROM RICO

Petitioners are simply wrong when they state that the Second Circuit, in citing *Terry A. Lambert Plumbing, Inc. v. Western Security Bank*, 934 F.2d 976, 981 (8th Cir. 1991), ruled that Congress intended to immunize bankers from § 1962(b) RICO claims. (Pet. 25). Respondents never claimed that bankers were exempt from RICO nor did the Second Circuit hold that bankers are exempt from RICO. Rather, the Second Circuit ruled that Rytmans' "failed to come forward with evidence to support their assertions of unlawful conduct" (Pet. App. 9), and that bankers do not become "racketeers" merely because they perform banking activities. (Pet. App. 8).

In fact, Rytmans have mischaracterized the Second Circuit's decision by failing to include the introductory signal "*see e.g.,*" used by the Court in referencing *Terry A. Lambert Plumbing* which is clearly used for the purpose of indicating an example of a proposition, not as a holding of the court. Rytmans also mischaracterized the Second Circuit's reference to *Reves, see* Section III, *supra.*

V. WHETHER THE SECOND CIRCUIT PROPERLY FOUND THAT THE PETITIONERS FAILED TO ALLEGE THE REQUISITE PREDICATE ACTS UNDER RICO

Petitioners also err in their claim that certiorari should be granted to clarify the extortion claims in this case. (Pet. 27). In its June 21, 1993 decision, the Second Circuit held that "Rytman's allegations do not meet . . ." the elements for a RICO cause of action. (Pet. App. 4). Although petitioners compare their pleading to that of a Virginia plaintiff who properly alleged RICO violations (Pet. 30), they are still faced with the simple fact that both the District and the Second Circuit Courts held that Rytmans' complaint failed to set forth any predicate acts of extortion. (Pet. App. 4).

Rytmans' claim that the Second Circuit's decision of June 21, 1993, conflicts with the case of *Battlefield Builders, Inc. v. Swango,* 743 F.2d 1060 (4th Cir. 1984) does not qualify as a conflict which warrants review by this Court. In *Battlefield,* the Fourth Circuit reversed the District Court, District of Virginia's dismissal of a RICO complaint and held that plaintiff alleged sufficient facts to plead extortion under Virginia law to support a claim under RICO. This holding does not create a conflict between the Second and Fourth Circuit. In both *Battlefield* and this action, the Circuit Courts made fact-specific decisions. In *Battlefield,* the Fourth Circuit held that plaintiff plead a cause of action, while in the case at bar, the Second Circuit held that petitioners failed to plead a cause of action. Therefore, there is no conflict between the two Circuit Courts.

VI. WHETHER THERE IS A NATIONAL DEBATE REGARDING THE THREAT TO ENFORCE LEGAL OR CONTRACTUAL RIGHTS AS THE BASIS FOR HOBBS ACT VIOLATIONS

Petitioners are again misguided in their interpretation of the Second Circuit's decision when they seek to claim that the Second Circuit ruled that any threat to enforce any legal or contractual rights may never be the basis for a Hobbs Act violation.

Instead, the Second Circuit ruled that petitioners here failed to articulate facts which would ". . . suffice to allege extortion within the meaning of the Hobbs Act." (Pet. App. 4). Petitioners merely alleged, *inter alia,* that certain lenders allegedly "threatened to foreclose" (Pet. App. 4) on certain properties and that they "demanded delivery of the collateral in satisfaction of a defaulted loan." (Pet. App. 4). Both the District and the Second Circuit Courts held that these allegations did not meet the required elements for a Hobbs Act violation.

VII. WHETHER ENFORCEMENT OF LEGAL OR CONTRACTUAL RIGHTS CONSTITUTES ACQUISITION OR MAINTENANCE OF AN INTEREST IN, OR CONTROL OF, A BORROWER'S BUSINESS

In determining that petitioners' allegations did not meet the requirements for a RICO cause of action, the Second Circuit specifically ruled that "such actions [do not] constitute acquisition or maintenance of an interest in or control of a borrower's business within the meaning of 18 U.S.C. § 1962(b)." (Pet. App. 5).

While it was clear that petitioners do not agree with the District and/or the Second Circuit Courts' decisions, a further review of the facts is not the function of this Court nor is it warranted here. *Graver Mfg., supra.* As Justice Rehnquist stated for this Court in *Ross v. Moffitt*, 417 U.S. 600, 616-17 (1974) "[t]his Court's review . . . is discretionary and depends on numerous factors other than the perceived correctness of the judgment we are asked to review." Petitioners merely seek yet another review of the decisions of the courts below because they do not agree with the "correctness" of the fact-specific decisions.

VIII. WHETHER THE SECOND CIRCUIT LIMITED ITS REVIEW OF PETITIONERS CLAIMS

Petitioners claim that the Second Circuit ignored their RICO allegations regarding conduct which spanned a two year period and that the District Court improperly limited its review to a mere nine month period. (Pet. 43). This claim is unsupported. In addition to its numerous general references to petitioners' complaint, the Second Circuit addressed such specific items as Paragraphs 10 (mmmm)(1) and 10(hh)(1) of the complaint. Paragraph 10 covers conduct in the time period between at least 1978 and 1987. Therefore, the Second Circuit clearly did not limit its review as petitioners claim.

Similarly, the District Court did not limit its review of petitioners' complaint. Although, the District Court on several instances referred to events between February, 1987 and November, 1987, it also referred to events well before that time period, *e.g.*, an egg supply agreement (Pet. App. 14) of 1978; an agreement between Colchester Foods (Kofkoff) and Rytmans (Pet. App. 14) of 1986; CNB loans to Rytmans (Pet. App. 14) prior to 1984; and, Norwich's participation in a Rytman/CNB loan (Pet. App. 14) of 1985.

Therefore, petitioners' claim that the courts below improperly limited the scope of their review to a specific time period must fail.

IX. WHETHER THE SECOND CIRCUIT PROPERLY DENIED PETITIONERS' REQUEST FOR ADDITIONAL DISCOVERY PRIOR TO GRANTING SUMMARY JUDGMENT

Petitioners contend that this case presents an "opportunity for the Court to consider the standards to be applied" in a case where a district court denies a motion under Fed. R. Civ. P. 56(f) to permit discovery to respond to a motion for summary judgment. (Pet. 45). However, this contention, as framed, might create a false belief that no such standard exists.

The law is well-established that a party seeking discovery necessary to respond to a motion for summary judgment must specify under oath, pursuant to Fed. R. Civ. P. 56(f):

> (1) what facts are sought and how they are to be obtained, (2) how those facts are reasonably expected to create a genuine issue of material fact, (3) what effort the [party] has made to obtain them, and (4) why the [party] was unsuccessful in those efforts.

Hudson River Sloop Clearwater, Inc. v. Dept. of the Navy, 891 F.2d 414, 422 (2d Cir. 1989); *Burlington*

Coat Factory Warehouse v. Esprit De Corp., 769 F.2d 919 (2d Cir. 1985).

Petitioners cite no less than fifteen (15) cases for the proposition that "[c]onsideration of a Summary Judgment motion is proper only after there has been adequate time for discovery" (Pet. 45), a position with which Norwich agrees. However, the issue here is not the standard to be applied, but whether the District Court, as affirmed by the Second Circuit, correctly applied Fed. R. Civ. P. 56(f) and the case law decided thereunder.

In their Rule 56(f) motion to the District Court, petitioners contended that they could not respond to Norwich's Motion for Summary Judgment without conducting additional depositions. Norwich's Motion for Summary Judgment was based on the contention that petitioners had absolutely no evidence to support any claim against Norwich. At the time of that motion, discovery had "already been conducted over a span of years in the state court proceedings involving those parties." (Pet. App. 7). In fact, over one hundred (100) days of depositions of the respondents had been conducted by petitioners in the more than five (5) years that the State Court actions (with virtually identical fact patterns as alleged in the instant action) had been pending.

Therefore, the District Court was well within its discretion to deny the requested extension of time, and the Second Circuit was well within its discretion to affirm that decision. The cases cited by petitioners lend no support to their claims that they should have been allowed to conduct additional discovery, as those cases are factually distinguishable from the case at bar.

The Second Circuit relying on *Ruffolo v. Oppenheimer & Co.*, 987 F.2d 129, 131-32 (2d Cir. 1993), and *Billard v. Rockwell International Corp.*, 683 F.2d 51, 57 (2d Cir. 1982), properly held that the District Court was not required to grant petitioners any additional discovery when petitioners had already had great access to dis-

covery in related cases over a period of years. (Pet. App. 7-8).

CONCLUSION

For all of the above stated reasons, respondents respectfully request that the petition for a writ of certiorari be denied.

Respectfully submitted,

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Dated: December 8, 1993

No. 93-766

In The

Supreme Court of the United States

October Term, 1993

JULIUS RYTMAN, DORA RYTMAN, COLCHESTER EGG FARMS, INC., RYTMAN GRAIN, INC., JULIUS AND DORA RYTMAN PROPRIETORSHIP, PINECREST DUCK FARM TRUST, AND AGRI-FINANCE, INC.

Petitioners,

vs.

KOFKOFF EGG FARM LIMITED PARTNERSHIP, SAMUEL KOFKOFF, ROBERT KOFKOFF, JOSEPH FORTIN, BLAIR HAGY, COLCHESTER FOODS, INC., PIERCE HOLLOW FARMS, FITCHVILLE REALTY, INC., CONNECTICUT NATIONAL BANK, NORWICH SAVINGS SOCIETY, BROWN, JACOBSON, JEWETT & LAUDONE, P.C. N/K/A BROWN, JACOBSON, TILLINGHAST, LAHAN & KING, P.C., MILTON JACOBSON, AND GLENN GORDON

Respondents.

Petition For Writ of Certiorari To The United States Court of Appeals For The Second Circuit

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No. 93-766

In the

Supreme Court of the United States

October Term, 1993

JULIUS RYTMAN, DORA RYTMAN, COLCHESTER EGG FARMS, INC., RYTMAN GRAIN, INC., JULIUS AND DORA RYTMAN PROPRIETORSHIP, PINECREST DUCK FARM TRUST, AND AGRI-FINANCE, INC.

Petitioners,

v.

KOFKOFF EGG FARM LIMITED PARTNERSHIP, SAMUEL KOFKOFF, ROBERT KOFKOFF, JOSEPH FORTIN, BLAIR HAGY, COLCHESTER FOODS, INC., PIERCE HOLLOW FARMS, FITCHVILLE REALTY, INC., CONNECTICUT NATIONAL BANK, NORWICH SAVINGS SOCIETY, BROWN, JACOBSON, JEWETT & LAUDONE, P.C. N/K/A BROWN, JACOBSON, TILLINGHAST, LAHAN & KING, P.C., MILTON JACOBSON, AND GLENN GORDON

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITIONER'S REPLY BRIEF

I. PETITIONERS RESPONSE TO RESPONDENTS COUNTERSTATEMENT OF FACTS

The Petitioner, in this counterstatement of facts, will address those statements made by the Respondents. Contrary to Respondents' assertions, Petitioners' did plead the following in the proposed Amended Complaint:

A. CNB converted funds belonging to Petitioners (e.g. Appendix Vol. 1, pp. 51-55, 63-65, 135-141);

B. Norwich controlled Petitioner's Enterprise's liquidations (Appendix, Vol. 1, pp. 55-61, 86-87, 90-96, 116-119, 154-155);

C. Respondents acquired all of Petitioners assets (Appendix Vol. 1, pp. 119-134, 150-160);

D. Petitioners were solvent and had more than enough assets to pay all of their obligations to Kofkoff, CNB, and Norwich (Appendix Vol. 1, pp. 60, 75, 78-79).

Further, contrary to Respondents assertion that Petitioners first asked for Leave to Amend on September 18, 1992 (Respondents Brief, p. 5) Petitioners requested the opportunity to amend in three separate memoranda of law, two dated June 19,

1992 and one dated July 17, 1993 (Second Circuit Joint Appendix, pp. 221-2, 257, 297). Therefore, the first request for leave to amend was made within 23 days of the first motion to dismiss long before the District Court ruled on the original State Court Complaint. The District Court never acted on those requests.

The Respondents note in footnote 4 that the Petitioner included the proposed Amended Complaint in their Appendix and not the State Court Complaint. The District Court found that the Amended Complaint was just a longer version of the State Court Complaint. Therefore, if the Amended Complaint states a claim, as a matter of law, then the State Court Complaint must also have stated a claim as a matter of law. Therefore, this Court has the proper document to review. Additionally, if the Petitioner seriously believed that the State Court Complaint was deficient, then they could have included it in an Appendix.

II. REPLY TO RESPONDENTS' BRIEF

II. A. RESPONDENTS IGNORE THE CONFLICT ARISING FROM THE SECOND CIRCUITS' USE OF THE "ABUSE OF DISCRETION" STANDARD IN REVIEWING PETITIONERS' LEAVE TO AMEND

The Second Circuit applied the wrong standard of review in examining Petitioner's Amended Complaint (Petition for Certiorari pp. 9-18). The Respondents have failed to brief the issue as to what was the proper standard except to say that it is the abuse of discretion standard. The cases cited in Petitioner's brief hold that a de novo review of an Amended Complaint is required if the leave to file an Amended Complaint is denied because it fails to state a claim as a matter of law. In light of the fact that the Second Circuit applied an abuse of discretion standard and the District of Columbia Fifth, Sixth, and Eleventh Circuit apply a de novo review standard, a conflict among the Circuits clearly exists. Vild v. Visconsi, 956 F.2d 560 (6th Cir. 1992) Cert denied ___U.S.___ 113 S.Ct. 99 (1993); Gaubert v. Federal Home Loan Bank Board, 863 F.2d 59 (D.C. cir. 1988); Dussouy v. Gulf Coast Investment Corp.,

660 F.2d 594 (5th Cir. 1981), 660 F.2d 594; Nolin v. Douglas County, 903 F.2d 1546 (11th Cir. 1990). The Petitioners ask this Court to resolve the conflict. Additionally, since the Second Circuit did not read the proposed Amended Complaint, it did not even properly assertain whether the District Court had abused its discretion. The Second Circuit completely abdicated its appellate function by any standard.

The Respondents are just wrong when they say "Petitioners reliance on Vild v. Visconsi, 956 F.2d 560 (6th Cir. 1992), cert. denied ___U.S.___ , 113 S.Ct. 99 (1993) is misplaced". (Respondents Brief p. 9). Vild held that when a leave to amend a complaint is denied because the amendment would not withstand a Motion to Dismiss the standard of review for the Circuit Court is de novo and not "abuse of discretion" standard.

The issue presented to the Second Circuit was exactly the same issue. The District Court dismissed the complaint for failure to state a claim and denied Petitioner's Request for Leave to

Amend on the basis that "[t]he proposed amended complaint *** fails to remedy the deficiencies prompting judgment for the defendants [which was a dismissal under Rule 12 b(6)]." App. p. 23.

There clearly is a conflict between the Circuits on this issue. Additionally, the idea that a District Court's denial of a request for leave to amend a complaint on the basis that it "fails to state a claim" is reviewable on an abuse of discretion standard is contrary to the whole body of jurisprudence that requires such rulings to be reviewed de novo and that review requires a finding that no relief could be granted under any set of facts that could be consistent with the allegations. H.J., Inc. v. Northwestern Bell Co., 492 U.S. 229, 249-250, 109 S.Ct. 2893, 2906 (1989); Hishon v. King of Spaulding, 467 U.S. 69, 73, 104 S.Ct. 2229, 2232 (1984).

II. B. THE PLAIN MEANING OF F.R.C.P. 81(C) REQUIRES A REVERSAL OF THE SECOND CIRCUIT'S OPINION

As outlined in the Petition, F.R.C.P. 81(c) requires that the state Complaint, removed to

Federal Court, is "deemed adequate when it enters the Federal Courts ....". In the absence of a court order ("Repleading is not necessary unless the Court so orders." F.R.C.P. 81(c)), the Petitioner's were not required to replead and should have been given the opportunity to bring the pleading into conformance with any rule the court deemed necessary in the federal action. Granny Goose Foods, Inc. v. Brotherhood of Teamsters, etc., 415 U.S. 423, 435-36 (1974); Matter of Meyerland Co., 960 F.2d 512 (5th Cir. 1992) cert. denied ___U.S.___ , 113 S.Ct. 967; Lally v. Allstate Ins. Co., 724 F.Supp. 760, aff'd 830 F.2d 28 (9th Cir. 1989); Recchion v. Kirby, 637 F.Supp. 284, 289 (WD Pa. 1985), citing 7A, Wright & Miller, Federal Practice and Procedure, Section 1824 at 312 (1972). (See Petition for Certiorari, pp. 18-22). Despite this fact, the Petitioner did seek leave to amend within twenty-three days of the filing of the first Motion to Dismiss (as part of their timely response to the Motion to Dismiss) two more times thereafter and again after the District Court

granted the Motion to Dismiss and Summary Judgment. Although the Petitioners clearly tried to replead by their own initiative four times on which the District Court failed to rule only on the last one, namely, Amended Complaint in the Appendix, which it just summarily denied, this case presents a clear opportunity to deal with who has the obligation to conform pleadings to the federal practice when a case is involuntarily removed to the Federal Court. Regardless, who has the obligation (1) the Court by ordering repleading, (2) defendants by affirmative motion or (3) the plaintiffs by its own initiative (which was clearly done in this case).

The language of F.R.C.P. 81(c) could be clearer or plainer. The Petitioners followed the rule and in fact, took affirmative action in seeking leave to amend even absent a Court Order. The decision of the Second Circuit's conflict with the language of Rule 81(c), the Supreme Court, and the Fifth and Ninth Circuits.

II. C. THE STANDARD APPLIED BY THE LOWER COURTS TO THE F.R.C.P. 56(f) MOTION WAS NOT THE ONE RESPONDENTS' ASSERT SHOULD HAVE BEEN APPLIED

The Respondents assert that the standard of review to be applied to a Rule 56(f) motion is set forth in Hudson River Sloop Clearwater, Inc. v. Dept. of the Navy, 891 F.2d 414 (2d Cir. 1989). (Respondents Brief, pp. 14-15). In fact, this case the Second Circuit ignored the standard set forth by the Respondents and created a new standard for determining when Summary Judgment Motions can proceed without discovery. The Second Circuit's standard that if there had been lengthy time spent on previous discovery in another action, that is the sole criteria, for upholding the District Court's denial of Petitioners' discovery requests. Such a new standard is directly contrary to the requirement that the non-movant party has full opportunity to conduct discovery set forth in Celotex Corp. v. Catrett, 477 U.S. 317 (1986) before Summary Judgment Motions can be heard. Further, unlike in the Hudson case, the trial court, in this case, made no finding of any kind as

to why Petitioners request for discovery was denied. The number of days spent doing discovery in the state action is not a factor in the standard set forth by the Respondents nor should it be. The factual allegation spans for many years and transactions involving millions of dollars and thousands of transactions.

The cases relied upon by the Second Circuit involve cases in which the parties obtained full discovery. Ruffolo v. Oppenheimer, 987 F.2d 129, 131-32 (2d Cir. 1993); Billard v. Rockwell International Corp., 683 F.2d 51, 57 (2d Cir. 1992). As outlined in Petitioner's brief (pp. 45-53), full discovery was not done in this case. In fact, discovery had hardly been started and the first set of Interrogatories by the Petitioners had not even been answered. Additionally, Petitioners claimed that new evidence had arisen through NSS Summary Judgment Motion and affidavit in support of that motion and those issues need to be examined and discovery conducted. This Second Circuit decision is in conflict with Rule 56(f) and many

other Circuits, e.g., Dean v. Barber, 951 F.2d 1210 (11th Cir. 1992); Secretary of Labor, U.S. Department of Labor v. Burger King Corp., 955 F.2d 681 (11th Cir. 1992); Miller v. Beneficial Management Corp., 977 F.2d 834, 846 (3rd Cir.1992); Snook Trust Co. of Georgia Bank of Savannah, 859 F.2d 865, 870 (11th Cir. 1988); (citing Littlejohn v. Shell Oil Co., 488 F.2d 1140, 1145 (5th Cir. 1973) (en banc), cert. denied, 414 U.S. 1116); Sames v. Gable, 732 F.2d 49, 51 (3rd Cir. 1984); Burnside-Ott Aviation Training Center, Inc v. U.S., 985 F.2d 1574, 1582 (9th Cir. 1993).

Clearly, the Second Circuit's position to affirm a ruling on Summary Judgment where virtually no discovery has been conducted in the instant case (and even where discovery has been conducted, but not completed, in a related case but where the RICO claims were not made) is contrary to Rule 56(f) especially where no findings were made as to why discovery was not allowed.

Even more importantly, the Petitioners know of no requirement that a party conduct "defensive

discovery" or "anticipatory discover" in a related case to defend against or anticipate a summary judgment motion that might be filed in a Federal RICO case (or any separately brought case). This is particularly true where Petitioners' position is that the party moving for Summary Judgment has filed a false affidavit presenting factual and legal issues not raised before in the other action. To bar discovery in this case, was just contrary to Rule 56(f) and accepted authority. The Supreme Court should resolve this issue.

II. D. WHAT CONSTITUTES "UNLAWFUL CONDUCT" AS A MATTER OF A LAW IS A LEGAL QUESTION AS OPPOSED TO A FACTUAL QUESTION

(i.) THIS APPEAL DEALS WITH FINDINGS OF LAW NOT FACT

The legal question presented by this Petition for Certiorari is whether the Petitioners' claims constitute unlawful conduct under RICO. The petitioner contends that the Second Circuit's definitions of what constitutes "unlawful conduct" is in conflict with other Circuits. The statement that the Petitioners' claims are as a matter of law not "unlawful" under RICO is a legal question and

not a factual question. In short, the Respondents have entirely missed the issues and their reference to Graver Tank & Mfg. Co., Inc. v. Linda Air Products Co., 226 U.S. 535, 695 Ct. 535 (1949) is just wrong. Graver Tank dealt with an appeal after a trial on the merits and whether the evidence supported the findings of fact. The same is true about United States v. Johnston, 268 U.S. 220 (1925) where the Supreme Court refused to review the factual determination of a jury after a criminal trial. The Petitioners are not asking this Court to reverse a factual finding of a trier of fact. The Petitioners are asking the Second Circuit and now this Court to review the factual allegations to see if "it is clear that no relief could be granted under any set of facts that could be consistent with the allegations". Hishon v. King of Spaulding, 467 U.S. 69, 73, 104 S.Ct. 2229, 2232 (1984) quoted in H.J., Inc. v. Northwestern Bell Co., 492 U.S. 229, 249-250, 109 S.Ct. 2893, 2906 (1989) (reversing a dismissal of a RICO claim where the Supreme Court indicated that its role was

read the complaint).

Although many (a minimum of 117) predicate acts are alleged, e.g. mail and wire fraud, state larceny and extortion, a major issue squarely presented to this Court is whether the Hobbs Act applies to business transactions. The Second Circuit held, as a matter of law, that it does not thereby concluding that the factual allegations did not plead "unlawful conduct". Nationwide the Hobbs Act is being pled in business contexts, this case being one of the more dramatic and egregious ones, therefore, the Court should grant certiorari on this issue. (See Petition for Certiorari, pp. 30-42).

(ii.) REVES V. ERNST & YOUNG SHOULD NOT HAVE BEEN REFERRED TO BY THE SECOND CIRCUIT IN THIS SECTION 1962(B) CASE

Additionally, in light of the fact that the Second Circuit quoted Reves v. Ernst & Young, ___ U.S.___ 1113 S.Ct. 1163, 1173 (1993) for the standard upon which to review the factual allegations relative to "control" makes this case (a 18 U.S.C. Section 1962(b) case where Reves, by

its language, was limited to Section 1962(c)) of even greater significance nationwide. This Court can address whether Reves definition of "control" for Section 1962(c) should be expanded to Section 1962(b) or whether Reves will be limited to Section 1962(c) cases as the decision clearly states.

(iii.) PREDICATE ACTS BASED ON STATE CRIMINAL STATUTES HAD TO BE ADDRESSED BY THE SECOND CIRCUIT

The Respondents also missed Petitioners point on predicate acts involving state crimes namely, the Second Circuit must review those predicate acts before dismissing the Complaint. The issue presented here is exactly the same as the issue presented in Battlefield Builders, Inc. v. Swango, 743 F.2d 1060 (4th Cir. 1984).

In Battlefield Builders, the Fourth Circuit reversed the District Court's dismissal of the complaint where the District Court stated:

> [t]he plaintiff is suing the defendant and if its allegations are true, it might have an approval claim, but it is at best a garden-variety commercial breach of contract, perhaps fraud, even perhaps conspiracy. But

> this is not what RICO was designed to remedy. I agree, it does not have to be organized crime, but it seems to me it has to be some pattern of something that would be called racketeering or enterprise of some sort. That just does not meet that.

Id., 1062-63. This statement is very similar to what the District Court stated in its decision on this case:

> A series of breaches of contract are alleged. Further, plaintiffs strongly indicate the extent of their displeasure with the way these events unfolded. However, such does not compromise a scheme to defraud plaintiffs through criminal acts.

App. p. 17. The District Court, in this case, refused to find unlawful conduct and noted that even if the defendants' conduct was "conspiratorial in nature", Id, no RICO claim was present.

The Fourth Circuit reversed the lower court in Battlefield, holding that the allegations sufficiently alleged extortion and attempted extortion under Virginia law the "plaintiffs did allege a cause of action which is immune to a Rule 12 motion to dismiss." 743 F.2d at 1063.

The Second Circuit (and the District Court) did not address nor consider the state predicate acts

of extortion and attempted extortion when they did their analysis. Therefore, the Second Circuit is in conflict with the Fourth Circuit and the explicit and clear language of 18 USC Section 1961(1)(A) making certain state law crimes predicate acts under RICO of which Connecticut criminal extortion is clearly one.

(iv.) THE FULL COMPLAINT HAS TO BE REVIEWED DE NOVO FOR PROPER CIRCUIT COURT REVIEW

The District Court and the Second Circuit limited their review of the Complaint from the Petitioners default on their loans in February 1987 forward and then limited the analysis of those claims. Crucial to Petitioners' RICO claim is that Respondents caused the default by their predicate acts and unlawful conduct. The District Court and the Second Circuit failed to address the wrongful conduct by the Respondents causing the default and in fact, failed to address the major claims of unlawful conduct against each group of defendants that make up the Respondents. The refusal of the Second Circuit to review all of the allegations of

the Complaint is contrary to accepted practice. Hishon, supra, H.J., Inc., supra, Schriver v. Rhodes, 416 U.S. 232, 236 (1974); Conley v. Gibson, 355 U.S. 41, 45-46 (1956); Swistock v. Jones, 884 F.2d 755 (3rd Cir. 1989).

The allegations not addressed by the Second Circuit concerning unlawful conduct prior to the default at Appendix A1-19 through and through A1-86 in the Amended Complaint. Even after the default, there are many allegations of predicate acts which are not addressed. Predicate acts of mail and wire fraud, state extortion and Hobbs Act claims can be seen by even cursory reading of the Amended Complaint. The failure of the Circuit Court to include these claims (and just rubber stamping the District Court) sets a standard under Rule 12(b)(6) that is just contrary to the Federal Rules and the above mentioned decisions of this Court and other Circuits.

CONCLUSION

For the foregoing reasons and for the reasons set forth in the Petition for Certiorari, the Petition for Certiorari should be granted.

Respectfully submitted,

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